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The *Chicago National Corporation Reporter* claims that chattel mortgage securities in Illinois have been considerably impaired by the decision of the supreme court of that State in Heckman v. Tammen, 184 Ill. 144. The laborer's lien created by the Act of 1895, which protects claims for wages of laborers or servants, where their employer's business is suspended by the action of creditors or the appointment of a receiver, is now extended over existing valid liens in the nature of a chattel mortgage, and this result is obtained, owing to the use of some language in the statute, although such a result was likely never intended by the law-making power.

The decision of the appellate court was unanimous (Judges Sears, Adams and Windes), while the decision of the supreme court comes with a strong dissent from Judges Cartwright, Boggs and Magruder.

"This result," says the legal journal above mentioned, "shows the difficulty of the question which presents a species of class legislation, humane in its character, but of doubtful expediency, when applied to the impairment of existing liens authorized by statute. The existing forms of chattel mortgages need overhauling in the face of this decision. A general provision might be inserted, which might compel a mortgagor, employing laborers, to render weekly accounts to the mortgagee as to the state of his labor roll, and in default thereof a foreclosure might ensue. If the labor account shows unpaid wages to a considerable degree, then the insecurity clause will become operative in an undisputed legal way, so as to more fully protect chattel mortgage securities."

The Supreme Court of New York has recently handed down a decision of special interest to all persons connected with secret societies, particularly those of the Masonic Order. The case is Koop v. Grand Lodge of Free and Accepted Masons of New York. It appears that plaintiff, who had been a Mason for many years, and was a past master of a lodge, was ordered to appear before three commissioners and stand trial on the charge of having written a letter to the then grand master, in which he assailed the latter. Mr. Koop appeared at one meeting, but refused to take part in the proceedings, declaring that the commission had not been properly appointed. He failed to appear at the next hearing, and evidence was produced to show that he had written the letter. It was decided to expel him, and sentence was affirmed by the commission on appeals, and was fully approved at the annual communication of the Grand Lodge in June, 1899.

This was the highest tribunal in the order, and thereupon Mr. Koop appealed to the civil courts, with the result that the supreme court affirmed the action of the Masonic court, holding that when men join fraternal organizations, and subscribe to their laws, they must abide by those laws. "As to the allegation that the punishment was too severe," said Mr. Justice Storer, "that is a matter with which this court has nothing to do. If the court below had jurisdiction to try the plaintiff, it had jurisdiction to fix the punishment of expulsion. Whether it was commensurate with the crime, or whether it was excessive, this court cannot decide. It will be seen that all of these alleged errors were, if errors at all, of judgment, not affecting jurisdiction, and were reviewable by the commission of appeals, whose judgment was not subject to review by the court. It was a case wholly for the Masonic tribunal.

"Again, objection is made that all tribunals were subject to the direction, in some way or other, of the grand master, and that, therefore, upon the charge made against the plaintiff the grand master was disqualified. If this were so it would be impossible for the order to try a person who desired to assail the grand master, and it would only be necessary for an offender to direct his offense against the grand master, and however much deserving of punishment, he would escape entirely by having made this selection of the object of his offense.

"I am unable to discover any grounds upon which this court could interfere. When the plaintiff became a Mason he submitted himself to the government of the order as prescribed by its constitution and by-laws. Whatever right he obtained he obtained from

the society itself. He held those rights subject to the laws of the governing body, and to no other. He was bound to conduct himself in accordance with the rules and laws of the society, and he knew that if he failed so to conduct himself he was amenable to the court established by the organization itself."

NOTES OF IMPORTANT DECISIONS.

ARREST — JUSTIFICATION—FALSE IMPRISONMENT.—In Sneed v. Bounoil, 63 N. Y. Supp. 553, decided by the New York Supreme Court, it was held that persons making an arrest without a warrant were liable for false imprisonment, even though the arrest itself was justified because of the undisclosed fact that the person arrested was carrying a concealed weapon, and was, therefore, guilty of a misdemeanor, where it appeared that the officers failed to take him before a magistrate without unnecessary delay and charge him with that offense, and that the person arrested was first charged only with being a "suspicious person" and remanded to the officers' custody at their request for another day that they might make inquiries about him and property which they suspected he had stolen, and it was not until the following morning that he was charged in court with the offense of carrying a concealed weapon. The court said in part:

"There is still another reason why the defendant should be held in this action. Even if the arrest was justified because, as matter of undisclosed fact, the plaintiff was carrying a concealed weapon, there was a distinct breach of the defendant's subsequent duty. That duty was to take the plaintiff before a magistrate without unnecessary delay, and charge him with the offense. His failure to do this made him a trespasser *ab initio*, and liable for false imprisonment. Pastor v. Regan, 9 Misc. 547, 30 N. Y. Supp. 657. In the latter case Justice Rumsey said:

'The rule laid down in the Six Carpenters' Case, 8 Coke, 146, that if a man abuse an authority given him by law he becomes a trespasser *ab initio*, has never been questioned. Indeed, the rule is not questioned in this motion, but the suggestion is made by the counsel for the defendant that this rule does not apply to the case of an arrest, but only to cases of unlawful or other seizures of property. That does not seem to be the case here. In the case of Tubbs v. Tukey, 3 Cush. 438, the precise question presented here was presented to the court, and it was held that the rule laid down in the Six Carpenters' Case applied to cases in which the arrest was legal, but the subsequent detention was illegal and unreasonable.'

"The case of Brock v. Stimson, 108 Mass. 520, was also cited—a case which fully supports the rule there laid down.

"Let us now look at the facts of the present case with relation to the question of unlawful detention. The plaintiff was arrested upon the evening of the 8th of November. He was then locked up at police headquarters for the night. Upon the morning of the 9th the defendant and Cottrell took him before a magistrate and there charged him with being a 'suspicious person.' They then made no charge of carrying a concealed weapon. On the contrary, they asked the magistrate to remand the plaintiff to their custody for another day to enable them to make inquiries about him and about the property which they suspected he had stolen. They succeeded in inducing the magistrate to do this, and accordingly the plaintiff was confined for another day and night at police headquarters while they prosecuted their inquiries. He was again taken before the magistrate on the morning of the 10th. Then the defendant and Cottrell, having concluded that they could not sustain their original accusation, for the first time—we mean for the first time in any court or before any magistrate—charged the plaintiff with the misdemeanor. He was thus detained from the morning of the 9th until the morning of the 10th unnecessarily and illegally, and deprived of the right to give bail so far as the charge of carrying a concealed weapon was concerned. Thus the officers utilized the felony charge to detain the plaintiff for at least twenty-four hours beyond the time when he was entitled to his discharge upon bail upon the misdemeanor charge. And the latter charge, though entered alternatively on the blotter at police headquarters, was only made to the magistrate as a last resort when it was found that the real charge upon which he had been detained could no longer be adhered to. Upon principle and authority this conduct of the defendant made him liable as a trespasser *ab initio*. Beyond peradventure he was liable for every hour that he detained the plaintiff after he and his associate secured the remand from the magistrate for a reason which could not have availed them had they then charged the plaintiff with the misdemeanor."

MASTER AND SERVANT—INJURY TO VOLUNTEERS.—In Cincinnati, N. O. & T. P. Ry. Co. v. Finnell's Admr., it is held by the Court of Appeals of Kentucky that where a boy 17 years old, in size a man, was fatally injured while assisting a railroad brakeman, at his request, in loading a piano on a train, the railroad company was not liable; the master not being liable to one who is injured through the negligence of his servants while assisting them at their request, provided the injured person was old enough to understand the danger. The court said:

"The question in this case is whether the railroad company is responsible for the injury to the boy, received while voluntarily assisting the brakemen in discharging their duties. The rule

on this subject is thus expressed in Wood, Mast. & S. § 455: 'A person who voluntarily, and without any employment, undertakes to perform a service for another, stands in the same relation as a servant for the time being, and is regarded as assuming all the risks incident to the business. And this is so even though the service is not wholly voluntary, but is induced by the request of a servant in the defendant's employ. Thus, where the plaintiff was sent by his master with a cart to the defendant's premises to get a load of cotton, and one of the defendant's servants requested him to assist in loading it, and while he was doing so he was injured by one of the defendant's servants negligently letting a bale fall upon him, it was held that an action could not be maintained; Erie, C. J., pertinently saying: "This is the case of one volunteering to associate himself with another's servants in the performance of the defendant's work, and this without the consent or knowledge even of the defendant." Such a person cannot stand in a better position than those with whom he associates himself, in respect to the master's liability.' The same rule is laid down in 1 Shear. & R. Neg. § 182; 1 Lawson, Rights, Rem. & Prac. § 325. In Church v. Railroad Co. (Minn.), 16 L. R. A. 861, 52 N. W. Rep. 647, the learned editor, citing a large number of authorities, thus well states the rule: 'One who has no interest in the performance of the work which he undertakes, whether of his own volition, or at the suggestion of others engaged in the work, and merely to assist them in its performance, is a volunteer, and assumes all the risks of the employment, and cannot recover for injuries occasioned by an accident happening through the neglect of those with whom he is acting.' There are a large number of cases supporting this rule. Thus, where the fireman of an engine asked a boy to put in the hose and turn in the water at a station, and the boy was killed while acting for the fireman, under circumstances not entitling the fireman to recover if he had been in the place of the boy, it was held that there could be no recovery. Flower v. Railroad Co., 69 Pa. 210. So where a boy was hurt in coupling cars. Railroad Co. v. Harrison, 48 Miss. 112. So, where the plaintiff was assisting the defendant's servants in delivering a fly wheel, and by their negligence the wheel was allowed to fall on him. Wischam v. Rickards (Pa. Sup.), 20 Atl. Rep. 532, 10 L. R. A. 97. So where the plaintiff, at the request of the brakeman, undertook to help them operate the brakes on the train. Mayton v. Railroad Co., 51 Am. Rep. 637; Evarts v. Railway Co. (Minn.), 57 N. W. Rep. 459, 22 L. R. A. 663. In notes to these cases numbers of other cases are collected. The same principles were announced by this court, except as to children too young to understand the danger in Railroad Co. v. Gastineau's Admr., 83 Ky. 119. Under these authorities, there can be no recovery for the injury to the intestate, unless the fact that he was an infant takes this case out of the rule. He was 17 years of age, and well grown for his years. The danger from the fall of a piano was apparent, and there is nothing in the record to warrant the conclusion that he had not sufficient discretion to be held responsible for the consequences of his acts. The rule is that a minor in entering a service assumes, like the adult, the risks of that service, unless too young to appreciate the peril to which he is exposed. 1 Shear. & R. Neg. § 218. In a note to this section are collected several cases in which this rule was applied to boys 15 or 16 years of age. In Kelley v. Asphalt Co., 93 Ky. 363, 20 S. W. Rep. 271, this court sustained a peremptory instruction where the boy was in his seventeenth year. The brakeman had no authority to call in others to help them in their work, and while it was their duty not to place children, or suffer them to remain, in places of peril, where by reason of their inexperience they would reasonably be exposed to injury, and appellant would be answerable for negligence on the brakeman's part if they did so, this duty is the same as every one owes to that character of persons on his premises, and the principle has no application where one who is substantially a young man undertakes to help another lift a piano. There is therefore nothing in the case to take it out of the general rule exempting the master from liability to one who is injured, while helping his servants at their request, by reason of their negligence; and the court should have instructed the jury to find for appellant."

DIVORCE—POSTNUPTIAL CONTRACTS — SEPARATION—PUBLIC POLICY.—One of the points decided by the Supreme Court of Oregon, in Henderson v. Henderson, is that a separation agreement between husband and wife, settling property rights, and providing for the support of the party not in fault, made in contemplation of separation or divorce on account of vicious conduct or disabilities of one party without fault or inducement of the other, is not repugnant to public policy. The following is from the opinion of the court:

"It is urged that the contract in controversy is against public policy, and void. But this can hardly be said of it when examined in the light of adjudications uniformly adhered to for a long period of time. In Walker v. Walker, 9 Wall. 743, 19 L. Ed. 814, where the validity of a deed of separation between the husband and wife was called in question because it was thought to have been executed contrary to public policy, it was held to be valid, the consideration being apparent, and that it would be enforced in equity if it appeared that it was not made in contemplation of a future possible separation; but in respect to one which was to occur immediately, or for the continuance of one that had already taken place, especially was it said to be true if the separation was occasioned by the misconduct of the husband, and the provision for the wife's support was reasonable under the circumstances, and no more than the court would award for her as alimony

should she seek such a remedy for her grievances. When the separation exists as a fact, and is not induced or occasioned by the agreement, the consideration for the husband's undertaking to pay alimony is his release from liability for the support of his wife. Roll v. Roll, 51 Minn. 353, 53 N. W. Rep. 716; Petit v. Petit, 107 N. Y. 677, 679, 14 N. E. Rep. 500. It may be stated, generally, that any contract or agreement between husband and wife, which, by its terms or effect, is conducive to a relaxation or a severance of the marital ties, is void, as contrary to public policy, and will not be upheld or maintained. But where a separation has been induced not by collusion, but by the vicious conduct or disability of one of the parties, without inducement or fault of the other, and it has furnished just grounds for legal separation, then a contract looking to a settlement of property rights and the proper maintenance of the one not in fault is in no sense repugnant to public policy. Randall v. Randall, 37 Mich. 563. In Wisconsin it has been determined, in effect, under a statute authorizing the court from time to time, upon petition of either of the parties, to revise and alter the decree as it may respect alimony or an allowance for the wife and children, that, notwithstanding the parties may have entered into an agreement anterior to the decree touching the amount of such alimony, the terms of which were incorporated in the decree, yet that the court was authorized to subsequently modify the allowance. Blake v. Blake, 68 Wis. 303, 32 N. W. Rep. 48; Blake v. Blake, 75 Wis. 339, 43 N. W. Rep. 144. The strong tendency of adjudications elsewhere, however, establishes a contrary doctrine,—that when parties have agreed between themselves touching the allowance, and the same is reasonable, and such as ought to be granted under the circumstances, and conditions attending the divorce proceedings, having in view the station and capabilities of the parties to respond, and not being contrary to the policy of the law, such an agreement, subject to the approval of the court, is binding upon the parties thereto. In Calame v. Calame, 25 N. J. Eq. 548, the husband had deserted his wife, and while he was living in a state of willful estrangement from her he offered in writing to turn over to her certain lands, and to pay her a sum of money, which she accepted in writing. The court, in subsequently granting the wife a divorce, further decreed that she was entitled to the lands and money agreed upon. Under the statute of New Jersey, alimony could not be given in gross, nor in a portion of the real estate of the husband. It was held, however, notwithstanding the court could not enforce an agreement as between the parties to live apart, yet that it could and would enforce an agreement, in a proper case, for the payment of the sum intended for separate maintenance according to the stipulations, and this without the intervention of a trustee, although the husband and wife could not ordinarily enter into a binding contract with each other. Mr. Chief Justice Beasley, in concluding his opinion, said: 'My deduction from these principles and decisions is that it was within the competency of equity to enforce, as a part of the decree of divorce, the agreement made, in lieu of alimony, between the complainant and defendant. I do not mean, however, that every agreement which is thus made will be supported. The court should undoubtedly look into these arrangements and their surroundings; but when it appears that the separation of the wife, forming the groundwork of the agreement, was justifiable, and the provision is suitable, to this extent it is, in my judgment, safe to say that the contract should be upheld.' In Stokes v. Anderson, 118 Ind. 533, 552, 21 N. E. Rep. 331, 338, 4 L. R. A. 313, 321, it was said: 'It may be that, if an action for divorce is pending, or if, in anticipation of such an action, the parties meet and agree upon the amount of alimony to be allowed to the wife in case a divorce is granted, and the arrangement is just and equitable, and confined strictly to the matter of alimony, it will be sustained. But if the agreement is broader in its terms, and its tendency is to interest the husband in procuring a divorce, or in foregoing resistance to an effort by his wife to that end, then it is contrary to public policy, and is void.' Everhart v. Puckett, 73 Ind. 409. See also Dutton v. Dutton, 30 Ind. 452. In Buck v. Buck, 60 Ill. 241, a decree was granted the wife, reciting, among other things, that the husband was a man of large property; that, alimony having been settled between the parties upon the basis therein stated, it was accordingly decreed that the husband pay to the wife $12,000, and the further sum of $1,000, the value of certain furniture and silverware, and that he should maintain and educate an adopted child. The case went to the supreme court, and as a ground of reversal it was urged that the alimony allowed by the court was excessive and oppressive. But it was held that the husband, having consented to the provisions of the decree, should have no relief against his own voluntary agreement; the court saying: 'Whether the alimony is too high, or whether the court had any lawful authority to make provision for the maintenance of the adopted daughter without the consent of the plaintiff in error, it is not now necessary for us to express an opinion. It was competent for the plaintiff in error to consent to such a decree, and, having done so, it must remain forever binding on him.' So in Storey v. Storey, 125 Ill. 608, 18 N. E. Rep. 329, 1 L. R. A. 320, it was held, 'while it is true that husband and wife cannot lawfully enter into an agreement for divorce, yet it is well settled that the amount of alimony which the husband is to pay to the wife, and the terms of the payment, and the length of time during which such payment is to continue, may be all arranged between them by consent.' So a decree awarding alimony in gross or out of the husband's realty, based upon the agreement of the parties, even where the statutory provisions do not permit an allowance in that mode, has been upheld and enforced. Crews

v. Mooney, 74 Mo. 26; Russell v. Russell, 4 G. Greene, 26. As bearing upon the question, see also Owen v. Yale, 75 Mich. 256, 42 N. W. Rep. 817; Peterson v. Thomas, 28 Ohio St. 596; Stratton v. Stratton, 77 Me. 373; Morrison v. Morrison, 49 N. H. 69. We conclude, therefore, in consonance with these latter authorities, that the better rule is that, notwithstanding the court has power and authority to modify its decree of divorce touching the awarding of a sum of money for the maintenance of either the husband or wife by the other subsequent to the entering of the decree, yet, nevertheless, they may agree in a proper case touching the amount of such sum and the manner of its payment, subject to the approval of the court as to its validity in good morals and as comfortable to public policy, and in further consideration of the *status* and condition of the parties relating to the question of its fairness and equability of adjustment; but that, when such an agreement has been approved by the solemn decree of the court, it becomes forever binding, to the same degree and with like effect as ordinary contracts between parties admittedly *sui juris*, and is not subject to revocation or modification, except by the consent of the parties thereto."

LIABILITY OF MASTER FOR INJURIES TO SERVANTS.

In determining the liability of a master for injuries to a servant under a given state of facts, regard must be had to the danger to be apprehended, the reasonable probability of incurring it, the care to be exercised by both parties, and the duties each owes to the other. The duties which the master owes to the servant may be classed as follows: To warn the servant of unusual dangers, to instruct and warn inexperienced servants, to provide suitable tools, machinery and appliances, to provide a safe place for the servant to work, to obviate dangers of which he has been notified, to employ competent and trustworthy servants, and to make and promulgate proper rules for the conduct of the business about which the servant is engaged. A failure by the master to exercise ordinary care in the performance of these duties will render him liable for injuries to a servant in consequence thereof. While the duties which devolve on the master are many, yet the servant is under the same obligations to provide for his own safety as a master is to provide it for him.[1] The servant must exercise ordinary care and prudence. Contributory negligence on his part will prevent recovery.[2] A servant injured by the negligence of his master cannot recover, if he could by reasonable care and prudence have averted the accident and the injury can be traced to his own negligence as well as that of the defendant.[3]

Duty to Warn Servants of Unusual Dangers.—The duty to exercise reasonable care to see that the place furnished for a servant to work is reasonably safe is a positive obligation toward the servant, and the master is responsible for any failure to discharge that duty, whether he undertakes its performance personally or through another servant. The fact that the department in which the servant is set to work is in charge of a foreman and the master has no personal knowledge of the unsafe condition of the place will not excuse him from liability. Personal knowledge by a master, of the unsafe condition of the place at which a servant is set to work, is not essential to render the master liable for injuries to such servant because of such unsafe condition, when it was known to the one who had charge and who placed the injured servant at work.[4]

To Instruct and Warn Inexperienced Servants.—If a master employs a servant to do work in a dangerous place, or where the mode of doing the work is dangerous and apparent to a person of capacity and knowledge of the subject, yet if the servant employed to do the work of such a dangerous character, or in a dangerous place, from youth, inexperience, ignorance, or want of general capacity, may fail to appreciate the dangers, it is a breach of duty on the part of the master to expose a servant of such a character, even with his own consent, to such danger, unless he first gives him such instructions or cautions as will enable him to comprehend them, and do his work safely, with proper care on his part.[5] There are many reasons given by the courts for holding to the rule above stated, the most satisfactory of which are

[1] Wornell v. Maine Cent. R. Co., 79 Me. 397.

[2] Smith v. Irwin, 51 N. J. L. (22 Vroom) 507.

[3] Piedmount Electric Illuminating Co. v. Patterson, 84 Va. 747.

[4] Hess v. Rosenthal, 160 Ill. 628; Chicago, etc. R. Co. v. Swett, 45 Ill. 197; Chicago, etc. R. Co. v. Jackson, 55 Ill. 492; Mobile, etc. R. Co. v. Godfrey, 155 Ill. 78; Fraser v. Schroeder, 163 Ill. 459.

[5] Roth v. Northern P. Lumbering Co., 18 Oreg. 205; Hangerford v. Chicago, M. & St. Paul R. Co., 41 Minn. 444.

(1), that the master owes a duty toward an employee who is directed to perform a dangerous and hazardous work, or to perform his work in a dangerous place, when the employee, from want of age, experience, or general capacity, does not comprehend the dangers, to point out to him the dangers incident to the employment, and thus enable him to comprehend and avoid them, and that neglect to discharge such duty is gross negligence on the part of the employer; (2), that such an employee does not assume the risk of the dangers incident to such hazardous employment, because he does not comprehend them, and the law will not, therefore, presume that he contracted to assume them.[6]

In a leading case in Michigan, Cooley, J., said: "He took an inexperienced man into a place of danger without apprising him of the risks, and without any warning that danger was to be anticipated. It is true the workmen in the business testify that they do not consider it dangerous, and probably it is not to one who fully understands it; but the man did not fully understand it, and the danger and loss of life came to him in consequence. The negligence consisted mainly in not informing him."[7] "But this rule cannot be properly applied in any case where the dangers were open and obvious, and the servant, although immature or inexperienced, had sufficient capacity to fully comprehend them; nor are they applicable when the servant, although not warned by the master, has from some other source obtained full information of the danger, and is of sufficient capacity to have avoided it, after it had became known to him."[8] Thus where a coal miner stepped directly into the bottom of a shaft, knowing that the cages with which coal was carried were above him, and being familiar with their operation, without looking up to see whether one of them was descending, or taking the slightest precaution for his safety, he was held guilty of negligence which prevented any recovery for injury received by being struck by a descending cage.[9] So an employee who had been for some time engaged in the use of an elevator which run only from the first to the second floor was held guilty of contributory negligence, where he received the injury by putting his head into the well to see what was the matter when he could have examined the matter safely by simply going upstairs.[10]

To Provide Suitable Machinery, etc.—The master is bound to observe all the care which prudence and the exigencies of the situation require, in providing the servant with machinery or other instrumentalities adequately safe for use by the latter. In Hough v. Railroad Co.,[11] Harlin, J., said: "It is implied in the contract between the parties that the servant risks the dangers which ordinarily attend, or are incident to, the business in which he voluntarily engages for compensation, among which is the carelessness of those, at least in the same work or employment, with whose habits, conduct, and capacity he has in the course of his duties an opportunity to become acquainted, and against whose neglect or incompetency he may himself take such precautions as his inclination or judgment may suggest. But it is equally implied in the same contract that the master shall supply the physical means and agencies for the conduct of his business. It is also implied, and public policy requires, that, in selecting such means, he shall not be wanting in proper care. His negligence in that regard is not a hazard usually or necessarily attendant upon the business. Nor is it one which the servant, in legal contemplation, is presumed to risk for the obvious reason that the servant who is to use the instrumentalities

[6] Bartonshill Coal Co. v. McGuire, 3 Macq. 311; Bartonshill Coal Co. v. Reid, 3 Macq. 266; Grizzle v. Frost, 3 Fost. & Fin. 622; Clark v. Homes, 7 H. & N. 937; Louisville, etc. R. Co. v. Frawley, 110 Ind. 18; Pittsburgh, etc. R. Co. v. Adams, 105 Ind. 151; Allen v. Burlington, etc. R. Co., 57 Iowa, 623; O'Connor v. Adams, 120 Mass. 427; Sullivan v. India Manf. Co., 113 Mass. 396; Coombs v. N. B. Cordage Co., 102 Mass. 572, 3 Am. Rep. 506, 102 Mass. 594; Railroad Co. v. Fort, 17 Wall. (U. S.) 553; Ryan v. Tarbox, 135 Mass. 207; Wheeler v. Wason Manf. Co., 135 Mass. 294; Smith v. Oxford Iron Co., 13 Vroom (N. J.), 467.

[7] Parkhurst v. Johnson, 50 Mich. 70, 45 Am. Rep. 28; Stephenson v. Duncan, 73 Wis. 404.

[8] Williams v. Churchill, 137 Mass. 243, 50 Am. Rep. 304; Fones v. Phillips, 39 Ark. 17, 43 Am. Rep. 264; Colvert v. Rankin, 72 Cal. 197; Atlas Engine Works v. Randall, 100 Ind. 293, 50 Am. Rep. 798; Hathaway v. Mich. Cent. R. Co., 51 Mich. 253, 12 Am. & Eng. R. R. Cas. 249, 47 Am. Rep. 569; McGinnis v. C. S. B. Co., 49 Mich. 466, 8 Am. & Eng. R. R. Cas. 135; Viets v. Toledo, etc. R. Co., 55 Mich. 120; Sullivan v. India Manf. Co., 113 Mass. 396; Coombs v. N. B. Cordage Co., 102 Mass. 572, 3 Am. Rep. 506.

[9] McDonald v. Rockhill Iron, etc., Co. (Pa.), 19 Atl. Rep. 504.

[10] Murphy v. Webster, 151 Mass. 121.

[11] 100 U. S. 213.

provided by the master has ordinarily no connection with their purchase, in the first instance, or with their preservation or maintainance in suitable condition after they have been supplied by the master.[12]

To Provide Safe Place for the Servant to Work.—The duty to exercise reasonable care to see that the place furnished for a servant to work is reasonably safe is a positive obligation toward the servant, and the master is responsible for any failure to discharge that duty. The fact that the danger is temporary and arises in the performance of the ordinary duties of other servants of the master, or one of which the master was ignorant, or one which existed for such a time that he could not have learned it upon paying ordinary attention to the business and the property, will not relieve him from liability.[13] The master cannot divest himself of such duty, and he is responsible as for his own personal negligence for want of proper caution on the part of his subordinates or agents.[14] In the case of Illinois Steel Co. v. Schymanowski,[15] Magruder, J., said: "Unquestionably, it was the duty of the appellant company when, through its foreman or superintendent or boss, it ordered appellee to work near or alongside of the pile of ore, to see to it that the pile was safe. Appellee had nothing to do with the construction of the pile or with the loosening of its material by means of explosives. He knew nothing about its condition. A foreman in charge of workmen and clothed with the power of superintendence, is bound to take proper precautions for the safety of the men at work under him. When he puts men at work along side of such pile of ore as has been herein described, which must be shattered by dynamite in order to loosen its component parts, it is his duty to observe carefully the condition of its material as to looseness or compactness, and all other features of its structure, so that he may be enabled to determine what should be done to prevent such injuries as those inflicted upon appellee. The jury might well have believed that if he had exercised proper skill and foresight the accident would not have happened. Whether or not appellee was in the exercise of ordinary care was a question of fact for the jury. It was no part of his duty to study the conditions affecting the stability of the ore at the sides of the pile, or to do anything except to work as well as he could under the directions of the foreman or boss."[16]

To Employ Competent and Trustworthy Servants.—Where a master confers authority upon one of his employees to take charge of and control a certain class of workmen in carrying on some particular branch of his business, such employee, in governing and directing the movements of the men in charge, with respect to that branch of the business, is a direct representative of the master, and not a mere fellow-servant. All commands given by him within the scope of his authority are, in law, the commands of the master, and if he is guilty of a negligent and unskillful exercise of his power and authority over the men under his charge, the master must be held to answer.[17] In Hough v. Railway Co.[18]

[12] Booth v. Boston, etc. R. Co., 67 N. Y. 593; Chicago, etc. R. Co. v. Taylor, 69 Ill. 461; Probst v. Delamater, 100 N. Y. 266; Sioux City, etc. R. Co. v. Finlayson, 16 Neb. 576; Chicago, etc. R. Co. v. Platt, 89 Ill. 141; Fort Wayne, etc. R. Co. v. Gildersleeve, 33 Mich. 134; Indiana Car Co. v. Parker, 100 Ind. 181; Bean v. Steam Nav. Co., 24 Fed. Rep. 124; Phila. etc. R. Co. v. Keenan, 103 Pa. St. 124; Penn. Co. v. Lynch, 90 Ill. 333; Columbus, etc. R. Co. v. Troesch, 68 Ill. 545. The statement of an employee at the time of the contract of employment that he is accustomed to the work. excuses the employer from explaining to him peculiar dangers ordinarily incident to such work; but it does not qualify the obligation of the master to furnish reasonably safe appliances, or excuse him from liability from any neglect so to do. Steen v. St. Paul, etc. R. Co., 37 Minn. 310.

[13] Hess v. Rosenthal, 160 Ill. 628.

[14] Mobile, etc. R. Co. v. Godfrey, 155 Ill. 78; Chicago, etc. R. Co. v. Jackson, 55 Ill. 492; St. L., A. & T. H. R. Co. v. Eggmann, 161 Ill. 155; Atchison, etc. R. Co. v. Moore, 29 Kan. 632; Hannibal, etc. R. Co. v. Fox, 31 Kan. 587; Lake Shore, etc. R. Co. v. Lavalley, 36 Ohio St. 221; Moore v. Wabash, etc. R. Co., 85 Mo. 588; Boyd v. Graham, 5 Mo. App. 403; Ferren v. Old Colony R. Co., 9 N. E. Rep. 608; Coombs v. N. B. Cordage Co., 102 Mass. 572; Cayzer v. Taylor, 10 Gray (Mass.), 274; Benzin v. Steinway, 101 N. Y. 547; Stringham v. Stewart, 100 N. Y. 516; Ryan v. Fowler, 24 N. Y. 410.

[15] 162 Ill. 455.

[16] Hennassey v. City of Boston, 161 Mass. 502. And to the same effect are many other cases: Atchison, etc. R. Co. v. Moore, 29 Kan. 632; Arkarson v. Dennison, 117 Mass. 407; Cayzer v. Taylor, 10 Gray (Mass.), 274, 69 Am. Dec. 274; Coombs v. N. B. Cordage Co., 102 Mass. 572, 3 Am. Rep. 506; Ferren v. Old Colony R. Co., 9 N. E. Rep. 608; Boyd v. Graham, 5 Mo. App. 403; Moore v. Wabash, etc. R. Co., 85 Mo. 588, 21 Am. & Eng. R. R. Cas. 509; Lake Shore, etc. R. Co. v. Lavalley, 36 Ohio St. 221; Benzin v. Steinway, 101 N. Y. 547; Stringham v. Stewart, 100 N. Y. 516.

[17] Fraser v. Schroeder, 163 Ill. 459; Wenona Coal Co. v. Holmquist, 152 Ill. 581; Chicago & Alton R. Co. v. May, 108 Ill. 288; Steel Co. v. Schymanowski, 59 Ill App. 32.

[18] 100 U. S. 213.

Justice Harlan said: "These observations as to the degree of care to be exercised by a railroad corporation in providing and maintaining machinery for use by employees apply with equal force to the employment and retention of the employees themselves. The decisions, with few exceptions not important to be mentioned, are to the effect that the corporation must exercise ordinary care. But according to the best considered adjudications and upon the clearest grounds of necessity and good faith, ordinary care in the selection and retention of servants and agents implies that degree of diligence and precaution which the exigencies of the particular service reasonably require."[19]

To Inspect and Repair Machinery.—The duty of the master to inspect and repair machinery and appliances is affirmative, and must be positively performed. In ascertaining whether this has been done or not the character of the business should be considered, and anything short of this would not be ordinary care.[20]

To Obviate Dangers of Which He Has Notice.—Where a master has expressly promised to repair a defect, the servant can recover for an injury caused thereby, within such a period of time after the promise as it would be reasonable to allow for its performance, and for an injury suffered within any period which would not preclude all reasonable expectation that the promise might be kept.[21]

To Make and Promulgate Proper Rules.—It is the duty of the master to make such provision for the safety of its employees as will afford them reasonable protection from the dangers incident to the performance of their respective duties.[22] Where such rules are adopted by the master, a failure to comply with them will render him liable for injuries received by the servant in consequence.[23]

Chicago, Ill. D. M. MICKEY.

[19] Wabash R. Co. v. McDaniel, 107 U. S. 454. See also Illinois Cent. R. Co. v. Jewell, 46 Ill. 99; Columbus, etc. R. Co. v. Troesch, 68 Ill. 545; Kray v. Chicago, etc. R. Co., 32 Iowa, 357; Rohback v. Union Pac. R. Co., 43 Ind. 187; Maxwell v. Hannibal, etc. R. Co., 85 Mo. 95; Brothers v. Cartter, 52 Mo. 373, 14 Am. Rep. 424; McDermott v. Railroad Co., 30 Mo. 115; King v. Boston, etc. R. Co., 9 Cush. (Mass.) 112; Caldwell v. Brown, 53 Pa. St. 453; Manville v. Cleveland, etc. R. Co., 65 Barb. (N. Y.) 129; Faulkner v. Erie R. Co., 49 Barb. (N. Y.) 324; Thayer v. Railroad Co., 22 Ind. 26; Chicago, etc. R. Co. v. Harvey, 28 Ind. 28; Davis v. Detroit, etc. R. Co., 47 Mo. 567, 4 Am. Rep. 353; Johnson v. Ashland Water Co., 71 Wis. 553, 5 Am. St. Rep. 243; Jones v. Old Dominion Cotton Mills Co., 82 Va. 146.

[20] Toledo, etc. R. Co. v. Conroy, 68 Ill. 560; Smoot v. Mobile, etc. R. Co., 67 Ala. 13; Brown v. Chicago, etc. R. Co., 53 Iowa, 595, 36 Am. Rep. 243; Frazier v. Penn. Co., 38 Pa. St. 104; Baker v. Allegheny R. Co., 95 Pa. St. 211, 40 Am. Rep. 634; Indiana Car Co. v. Parker, 100 Ind. 181; Houston, etc. R. Co. v. Dunham, 49 Tex. 181; Johnson v. Richmond, etc. R. Co., 81 N. Car. 446.

[21] Conroy v. Iron Works, 62 Mo. 35; Patterson v. Pittsburgh, etc. R. Co., 76 Pa. St. 389; Le Clair v. First Div. St. P., etc. R. Co., 20 Minn. 9; Manfg. Co. v. Morrissey, 40 Ohio St. 148, 48 Am. Rep. 669; Greene v. Minneapolis, etc. R. Co., 31 Minn. 248; Muadleston v. Machine Shop Co., 106 Mass. 282; Snow v. Housatonic R. Co., 8 Allen (Mass.), 441; Parody v. Railroad Co., 15 Fed. Rep. 205; Hough v. Railroad Co., 100 U. S. 213.

[22] Lake Shore, etc. R. Co. v. Lavalley, 13 Ohio St. 221; Chicago, etc. R. v. Taylor, 69 Ill. 461, 18 Am. Rep. 626.

[23] Where the work of one employed in a saw-mill to remove and pile in the yard lumber as fast as sawed is such as to bring him upon a part of a platform frequently made dangerous by heavy timbers coming down upon the platform from the saws above with great velocity, and at regular intervals, it is negligence for the mill owner, who had adopted a custom of warning the men of the coming of these timbers by means of a signal to omit the customary and cautionary signal, and it is not negligence for the employee to wholly rely upon the giving of such signal. Anderson v. Northern Mill Co., 42 Minn. 424.

INTOXICATING LIQUORS—SALE ON SUNDAY—SERVANT — VIOLATION OF INSTRUCTIONS —OFFENSE.

ROSENBAUM v. STATE.

Appellate Court of Indiana, April 18, 1900.

Where defendant, a saloon keeper, instructed his bartender, who did not have a key to the barroom, but only to the storageroom, that he must not sell liquor on Sunday under penalty of discharge, and the bartender in defendant's absence, without his knowledge, and in violation of his instructions, sold liquor on Sunday, defendant is not criminally liable for such sale, and a judgment convicting defendant of selling liquor on Sunday was erroneous.

WILEY, C. J.: Appellant was licensed to sell intoxicating liquors as a beverage, and was indicted, tried, and committed for a sale alleged to have been made on Sunday. The only question discussed arises under the assignment of error challenging the overruling of appellee's motion for a new trial. The reasons assigned for a new trial are that the verdict is contrary to the law and the evidence, and that the court erred in giving certain instructions.

The principal discussion of counsel is directed to the evidence, and is urged that it is wholly inadequate to support the verdict and judgment

The undisputed facts upon which the State secured a conviction below are these: Appellant was a saloon keeper in Rensselaer, and was engaged in retailing intoxicating liquors under a license. He had in his employ one Carl Hershman, as a bartender. Hershman did not have a key to the room where liquors were sold and drank, and had no means of ingress to the room. He did have a key to a small back room, designated a "cold-storage room." He had been instructed by appellant that he must not sell any liquors on Sunday, or at other prohibited times, and that, if he did, he would be discharged from the service of appellant. One Hemphill testified that at one time, which he thought was Sunday, but he was not certain about it, he purchased from Hershman, in this cold-storage room, a quart of beer, and paid for it. It is further disclosed by the evidence that on the day the alleged sale was made by Hershman to Hemphill appellant was not at his saloon; that he had no knowledge of any such sale; and that he was visiting at the home of his father-in-law. The facts above stated are undisputed.

The question for decision is simply this: Concede that the sale was made by Hershman, can appellant be held liable for a violation of the statute by his servant, which violation took place in his absence, and the act of the servant in making the sale being in violation of his instructions? If this inquiry can be answered in the affirmative, then the verdict and judgment are right; but, if in the negative, then he was not guilty, and the judgment must be reversed. From the many adjudications in this jurisdiction upon this and analogous questions, it seems to us that the point at issue is of easy solution. There are many cases in point, the first of which is Pennybaker v. State, 2 Blackf. 484. There appellant was indicted for an unlawful sale of liquor. The evidence showed that his wife made the sale in his absence and without his authority. It was held that a conviction could not be sustained upon the facts, and in deciding the case the court said: "A single question is presented for our consideration. Can the judgment be sustained on the indictment that the whisky, charged in the indictment to have been sold by the defendant, was sold by the wife, he being absent from the house, and no authority proved to have been given? We think the evidence insufficient to establish the liability of the defendant. The presumption of agency is inadmissible. The wife, committing offenses without the presence or coercion of the husband, is regarded as a *feme sole*. She alone is responsible." In the case of Hipp v. State, 5 Blackf. 149, appellant was indicted for an unlawful sale of liquor. Upon the trial it was shown that the sale was made by his bartender, in his absence and without his knowledge. The court instructed the jury that, though the sale was made by the bartender who had been left in charge of appellant's tavern, and without his knowledge, yet he was guilty, as though the sale had been made by himself. This instruction was held erroneous, and in passing upon it the court said: "We think it ought not to have been given. The landlord was not liable, under the circumstances, to an indictment for the act of his barkeeper. If the defendant had commanded the offense to be committed, or had been present when it was committed, without making any objection to it, the act would have been his own. * * * The case was reversed on this error. This case is a much stronger one than that. Here not only does the uncontradicted evidence show that the appellant was not present when the act was committed, but that it was committed, if at all, without his knowledge or consent, and against his express directions." A similar case is that of Wetzler v. State, 18 Ind. 35. It was there held that, to sustain an information for engaging in common labor on Sunday by selling unlawfully two gills of spirituous liquor, which were sold by appellant's agent in his barroom, it should appear that appellant was present or had some knowledge of the selling when it was being done. The court said: "The evidence shows that the liquor was sold in the defendant's barroom by his barkeeper; but there was no evidence tending to show that the defendant was present when the sale was made, or had any knowledge whatever of the selling when it was done. The evidence is plainly insufficient to sustain a conviction." In Lauer v. State, 24 Ind. 131, appellant was indicted for selling intoxicating liquors to a minor. The evidence showed the sale was made by a barkeeper, without the knowledge or consent of the appellant, either express or implied. It was ruled that a conviction could not stand upon such facts, and the court, by Frazier, J., said: "We must not hold men responsible for crimes committed by others without some proof that they either procured, counseled, or advised their perpetration." To the same effect, see Anderson v. State, 39 Ind. 553; *Id.* 555; Hanson v. State, 43 Ind. 550. O'Leary v. State, 44 Ind. 91, is in point. There appellant was indicted for a sale of liquor to a person in the habit of becoming intoxicated. The evidence disclosed the fact that the sale was made by a barkeeper of appellant in his absence, without his knowledge or consent, and against his express direction. Upon these facts it was held that the conviction could not be sustained. In the case of Thompson v. State, 45 Ind. 495, appellant was indicted for selling liquor to a minor. The evidence showed that at the time he was out of the State; that the liquor was sold by his barkeeper, and that such sale was unauthorized by him. Held, that there could be no conviction. See, also, Thompson v. State, 45 Ind. 496; Zeller v. State, 46 Ind. 304; Wreidt v. State, 48 Ind. 579. The recent case of Wilson v. State, 19 Ind. App. 389, 46 N. E. Rep. 1050, is directly in point in the principle involved. There appellant was indicted under section 5323c, Horners' Rev. St. 1897, for permitting a person, other than himself or a member of his family,

to go into his saloon during prohibited hours. At the time charged in the indictment, appellant was not in the city where his saloon was situated. He had gone away and left his saloon in charge of a barkeeper, with whom he also left his key. Before he left home he instructed his barkeeper to keep out of the saloon during all prohibited hours. The indictment charged him with permitting his barkeeper to go into the saloon during a prohibited time. Upon these facts it was held that conviction could not stand. Henley, J., who renders the opinion, said: "The question then is, can appellant be held responsible for the acts of his bartender, the same being done in direct violation of his orders? We do not believe that an employee or agent can render his principal criminally liable on account of the act of the agent, when the act was done without the consent, and in direct violation of the orders given the agent in that regard." In view of these authorities, and there being none to the contrary, we must hold that, upon the facts disclosed by the record, appellant cannot be held guilty of the misdemeanor charged against him. This conclusion on the facts makes it unnecessary for us to consider the objections urged to the instructions. If the case should be again tried, it is not likely the same questions will arise upon the instructions to the jury. Judgment reversed, and the court below is directed to grant appellant a new trial.

Comstock and Robinson, JJ., concur in the conclusion reached, but not upon the authority of Wilson v. State, *supra*.

NOTE.—*Recent Decisions as to the Criminal Liability of Servant or Agent for the Sale of Intoxicating Liquor.*—One who, at the request of the proprietor of a bar, though not connected therewith, goes thereto, and procures liquor for a customer, handing the proceeds to the proprietor, is guilty of selling intoxicating liquors to the same extent as the proprietor of the bar. Beck v. State, 69 Miss. 217, 13 South. Rep. 835. The sale of liquors to the members of an incorporated club by a servant thereof, where neither the servant nor the club had a license to sell, is unlawful, and the servant is liable criminally. People v. Luhrs, 28 N. Y. S. 498, 7 Misc. Rep. 503. On prosecution for keeping intoxicating liquors with intent to sell the same, it is immaterial that defendant intended to make the sales in the presence of his employer, as it is no defense for one who commits a crime to show that he was acting as a servant, in the presence and under the direction of his master. Commonwealth v. Ryan, 160 Mass. 172, 35 N. E. Rep. 673. Under the local option law, which makes it unlawful for any person to sell, etc., or "to keep a saloon or place where," etc., a mere clerk or bartender employed to sell, both in the presence and absence of the proprietor, is guilty of keeping the place. People v. Rice (Mich.), 61 N. W. Rep. 540. One cannot be convicted of selling intoxicating liquors, contrary to a local option law, on evidence that any sale was made by his clerk, unknown to him, against his express orders, and in his absence. Wadsworth v. State (Tex. Cr. App.), 34 S. W. Rep. 934. Defendant, in a local option district, received money from a third person, for which he was to send such person a keg of beer, which he purchased outside of the local option district, and sent to such person. Defendant was not interested in the sale of beer. Held that, as he acted merely as the agent of such third person in such purchase, he could not be convicted of a violation of the local option law. Way v. State (Tex. Cr. App.), 35 S. W. Rep. 377. In a prosecution for violating the local option law, there was evidence that defendant took money from one P, and procured liquor with it for P. Held that, if defendant was the agent of P in gettting the whisky, he would not be guilty of selling liquor. Bowman v. State (Tex. Cr. App.), 35 S. W. Rep. 382. Where neither principal nor agent has complied with the law by paying the tax or filing a bond in a county where the agent has sold beer, the agent may be informed against as principal. People v. De Groot (Mich.), 69 N. W. Rep. 248. Whoever aids or assists in keeping a place for the sale of intoxicating liquors in violation of the statute, whether as owner or clerk, is a principal. Barnes v. People (Mich.), 71 N. W. Rep. 504. One who sells liquors without any prior oath and bond, as required by Rev. St. sec. 3890, is liable to the statutory penalties, though he sells as agent or servant of the owner. State v. O'Connor, 65 Mo. App. 324. Defendant, a druggist, had a regular pharmacist and assistant in charge of his store, whom he expressly instructed not to sell any liquors to any one except on a prescription of a regularly registered physician and for medicinal purposes, and not to sell more than once on any one prescription, as authorized by statute. Held, he was not liable for sales by his employees in contravention of these instructions in his absence, and without his knowledge. Commonwealth v. Johnston, 2 Pa. Super. Ct. Rep. 317. To convict of a sale to a minor, the evidence must show defendant consenting to the sale, or authorizing it or ratifying it. Freedman v. State (Tex. Cr. App.), 38 S. W. Rep. 993. A conviction for illegal sale of liquor was erroneous where defendant purchased the liquor for another person with money furnished by the latter, and was not interested in the sale, as the seller's agent or otherwise. Phillips v. State (Tex. Cr. App.), 40 S. W. Rep. 270. One who, on a request for whisky, referred the applicant to his daughter, who made the sale, was guilty as principal. Buechert v. State (Tex. Cr. App.), 40 S. W. Rep. 278. Under Sand. & H. Dig. sec. 1904, providing that "if any person having a license to keep a tavern or dramshop shall knowingly permit any person to play at any game of cards" he shall be deemed guilty of a misdemeanor, the owner of a saloon cannot be convicted where gambling was permitted by the barkeeper without the owner's knowledge and contrary to his orders. Wilson v. State, 64 Ark. 586, 43 S. W. Rep. 972. An employee of a licensed dealer, who, in direct disobedience of his master's command, makes a sale of liquor, cannot, in defense to a prosecution against him for selling without a license, set up that the sale was made in the employer's behalf, and under the latter's license. Butler v. City Council of Augusta, 100 Ga. 370, 28 S. E. Rep. 164. One who acts as agent of the buyer, and not of the seller, is not guilty of making an unlawful sale. Jones v. State, 100 Ga. 579, 28 S. E. Rep. 396. Merely buying whisky for another, whose money is used in making the purchase, does not, "as matter of law," constitute the person so doing the agent of both the seller and the buyer. Evans v. State, (Ga.), 29 S. E. Rep. 40. The mere failure of a person, claiming merely to have bought whisky for another, to disclose, at the time of so doing, "the name of the person from whom he bought," will not if itself warrant the conclusion that he is himself the seller.

Evans v. State (Ga.), 29 S. E. Rep. 40. Act May 24, 1887, requiring the proprietor of a drug store to employ pharmacists, does not affect the relations of the employee to his employer so far as the sale of intoxicating liquor is concerned. Commonwealth v. Johnston, 5 Pa. Super. Ct. 585, 28 Pitts. Leg. J. (N. S.) 141, 41 W. N. C. 92. In a prosecution for violating the local option law, two State's witnesses testified that they went into a barroom, and bought and paid for beer sold by a negro; that accused refused to allow their companion to enter, because he had "been giving people away." Accused testified that he was only employed to keep watch of the business; never sold intoxicating liquors; that he had no interest in the business; and admitted that he refused State's witness admittance to the barroom. Held sufficient to support the conviction of accused as principal. Wolfe v. State (Tex. Cr. App.), 43 S. W. Rep. 997. That one charged with selling liquor without a license was only an agent is no defense, as he is required to take notice of whether his principal has a license to sell at the place where defendant engages in business. Witherspoon v. State (Tex. Cr. App.), 44 S. W. Rep. 164. One who, as an act of accommodation, obtained liquor for prosecuting witness from a third person, but had no interest in the price paid therefor, nor any pecuniary interest in the sale thereof, is not guilty of violating the local option law. Treue v. State (Tex. Cr. App.), 44 S. W. Rep. 829. Defendant, at the request of another, undertook to purchase for the latter a quantity of spirituous liquor in a county where such sales were unlawful. The owner of the liquor, when informed of defendant's agency, declined to sell on credit, but delivered to the agent the liquor desired, with instructions to bring back either the money or the liquor. Held, that defendant was not the agent of the owner of the liquor. Cunningham v. State (Ga.), 31 S. E. Rep. 585. One acting as agent for the purchase of liquors in a county where their sale is prohibited by law is not made liable for violating the law as a seller, by reason of the receipt of the purchase price from the purchaser, and the delivery of the liquor to such purchaser, where the seller refused to sell on credit, and required either the return of the purchase price or the liquor. Cunningham v. State (Ga.), 31 S. E. Rep. 585. Evidence that the wife, as agent of her husband, sold whisky, for which he received the money, authorized her conviction of the offense of selling without a license. Smith v. Commonwealth (Ky.), 48 S. W. Rep. 1081. A person who is a manager, and also a member and officer, of a social club incidentally engaged in the selling and drinking of intoxicating liquors, and who exercises a general superintendence over the affairs of the club, including the bar, from which intoxicating liquors are furnished, is a person keeping a tippling house, within Pen. Code, sec. 390, prohibiting their being kept open on Sunday. Mohrman v. State (Ga.), 32 S. E. Rep. 143.

BOOK REVIEWS.

THE LAW PERTAINING TO ELECTRIC WIRES.

Nothing perhaps used for the promotion of business and commerce has increased more in the past twenty-five years than electric wires; telephones increased their use immensely, but later on when electricity came into use as power for transportation and manufacturing purposes, the use of electric wires increased again many fold. Succeeding the general increased use comes litigation. Rights of parties engaged in such uses come to be interpreted by courts, and it is only since the publication of the first edition of Keasbey on Electric Wires that numerous closely contested cases came to final termination by courts of last resort. This is shown by the large number of cases cited in the second edition, about 1,200, which is a good many for one topic of a comparatively new subject, for it is not the whole law relating to electricity being treated, but only so far as relates to the use of wires. The author takes up and treats with much skill and learning the various phases of relations of wires to highways, authority for their use in streets, legislative control over streets, limits of municipal authority, electric railway cases, grants subject to local authorities, police regulations, regulation of fares, poles and wires as obstructions and how far by permission, underground wires, power to compel wires to be placed underground, right of companies to put wires underground, rights of abutting landowners with reference to use of streets, elevated railway cases, rights of property owners with reference to telegraph and telephones, with reference to electric light wires, lighting private houses, property owners' rights with respect to electric railways, steam and horse railways, cable roads, steam dummy roads, condemnation of private rights, telegraphs on post roads, unauthorized obstruction of highways, liability for injuries, maintenance, negligence, defective material, dangerous currents, electric wires as property, real or personal, mechanics' liens, taxation. The author has undoubtedly gone into the subject in the most diligent and painstaking manner; his examination of the cases has been most thorough. Many of the questions discussed in the first edition as new have now become settled law. The questions discussed which are perhaps of the greatest practical importance are those relating to the powers of municipalities over the use of the streets, the power of condemnation where private rights are involved, and the rights of abutting owners; the latter occupying six chapters, 110 pages. In these chapters many intricate questions are treated as to the rights of abutting owners. Considerable space is devoted to the question of when injunctions will lie to restrain the construction of electric railroads and telegraph lines or the changing of a pre existing motive power to electric power. The use of streets however for electric light lines has generally been held not to impose any new burden on the land, and private rights are very rarely affected thereby. It has been held that an electric railway company may condemn the privilege of using the tracks of a cable railway, and that in estimating the damages, the cost of the cable conduit should be considered, although it cannot be used by the electric railway company. The author has considered with much care the liability of companies operating electric roads and electric lighting plants for injuries by reason of dangerous currents of electricity, also the rights of telegraph companies under acts of congress as well as at common law to string wires along railroads, and their liability for negligence in so doing. There is a present great need for the present new edition of this book, and the profession will find this need amply, systematically and most thoroughly supplied. The author is Edward Quinton Keasbey of the New Jersey bar. The book is handsomely bound in best law sheep, 8 vo. Published by Callaghan & Company, Chicago.

BOOKS RECEIVED.

The Law of Banks and Banking, Including Acceptance, Demand and Notice of Dishonor upon Commercial Paper. With an Appendix, Containing the Federal Statutes Applicable to National Banks. By John M. Zane, of the Chicago Bar. Chicago, T. H. Flood & Company, 1900. Sheep, pp. 852. Price, $6.30. Review will follow.

Trial Evidence. The Rules of Evidence Applicable on the Trial of Civil Actions (Including both Causes of Action and Defenses), at Common Law, in Equity and under Codes of Procedure. By Austin Abbott, LL.D. Second Edition, Revised and Enlarged, by John J. Crawford, of the New York Bar. New York: Baker, Voorhis & Company, 1900. Sheep, pp. 1,190. Price, $6.90. Review will follow.

Probate Reports Annotated: Containing Recent Cases of General Value Decided in the Courts of the Several States on Points of Probate Law. With Notes and References. By George A. Clement, of the New York Bar. Author of Clement's Digest of Fire Insurance Decisions. Vol. IV. New York: Baker, Voorhis & Company, 1900. Sheep, pp. 767. Price, $5.50. Review will follow.

Readings in the Law of Real Property. An Elementary Collection of Authorities for Students. Selected and Edited by George W. Kirchwey, Nash Professor of Law in Columbia University. New York: Baker, Voorhis & Company, 1900. Canvas, pp. 555. Price, $3.75. Review will follow.

HUMORS OF THE LAW.

A young law student was recently standing an examination for admission to practice law. Among the questions asked was this, "State the rule in Shelley's case." The student took this question to be a personal one, and determining not to be outwitted, he replied, "The rule in Shelley's case is the same as in any other case. The law, as I understand it to be, is no respecter of persons."

A farmer named Parks, who was noted for driving hard bargains, agreed to lease his farm to an illiterate wag named Buffington. Parks employed a pettifogger who drew up the lease, after the manner of his tribe, with an unscrupulous regard for his client's interest and a bountiful repetition of the word, "said."

After the lease was completed Buffington was called in and the instrument was read to him.

"I wont sign it," said he. "Why wont you?" exclaimed the farmer indignantly. "Because," he replied, "there's too d——much of the said Parks and not enough of the said Buffington."

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Important Decisions and except those Opinions in which no Important Legal Principles are Discussed of Interest to the Profession at Large.

1. ANIMALS—Negligence—Damages.—One may negligently keep and harbor a vicious dog, knowing him to be such, without being the owner of the animal, and he may thus keep and harbor a vicious dog without owning or controlling the premises where he may be kept; and he may be chargeable with notice of the viciousness of the dog through his neglect to take notice of his vicious habits.—HAYES v. SMITH, Ohio, 56 N. E. Rep. 879.

2. ANIMALS—Sheep Killed by Dogs—Liability.—Under Rev. St. 1898, § 1620, making the owner of a dog responsible for any damage caused by his dog worrying or killing sheep, an instruction that each owner of a dog is liable for the whole amount of damages sustained, where his dog engaged in killing sheep, though another's dog may have also participated in the killing, was proper, since it is manifestly impossible to apportion the damages in such a case.—NELSON v. NUGENT, Wis., 82 N. W. Rep. 287.

3. APPEAL—Amount in Dispute—Effect of Settlement Reducing Judgment.—A voluntary settlement by a judgment debtor with one of the plaintiffs, and payment to him, which leaves the amount unpaid on the judgment less than that which is necessary to give jurisdiction to review it, is fatal to the right of review, since the real matter in dispute in such case is the balance still remaining due on the judgment.—THORP v. BONNIFIELD, U. S. S. C., 20 Sup. Ct. Rep. 533.

4. ASSIGNMENTS FOR BENEFIT OF CREDITORS—Chattel Mortgages.—A chattel mortgage, which was valid between the parties thereto, but void as to creditors of the mortgagor and subsequent purchasers and incumbrancers, because not accompanied by the affidavit of all the parties thereto that it was made in good faith, and without any design to hinder, delay, or defraud creditors, as required by Civ. Code, § 2957, was valid as to the assignee of the maker thereof in a voluntary assignment for the benefit of creditors; Civ. Code, § 3460, providing that an assignee takes no greater rights in the property of the assignor than the latter had.—FIRST NAT. BANK OF SAN JOSE v. MENKE, Cal., 60 Pac. Rep. 673.

5. ASSUMPSIT—Parties — Mortgages — Assumption of Debt.—Where an owner of land subject to a trust deed given to secure payment of notes conveys the premises by a warranty deed, in which the grantee assumes the incumbrance, and accepts the deed with such assumption clause therein, an indorsee of such notes can sue the grantee thereon in his own name in *assumpsit*, though such indorsee is not a party to the conveyance. —HARTS V. EMERY, Ill., 56 N. E. Rep. 865.

6. BANKRUPTCY—Opposition to Discharge — Concealment of Assets.—Where a bankrupt was in the control and management of a retail business, which he alleged was the property of his wife, but it appeared that he had transferred the building and stock in trade to his wife at a time when he was threatened with the enforcement of a large judgment against him, that the wife had no money at the time, and that the business was the only source of support of the bankrupt and his family, held, that the transfer to the wife was colorable only, and fraudulent as to creditors, and left the bankrupt the real owner, and that his failure to list the property in his schedule of assets was ground for refusing his application for discharge.—IN RE WELCH, U. S. D. C., S. D. (Ohio), 100 Fed. Rep. 65.

7. BANKS—Stockholder's Individual Liability.—Acts 1896, ch. 349, requiring all the assets of an insolvent corporation to be distributed to its creditors in the same way as the assets of an insolvent debtor, and Code, art. 23, § 269, vesting in receivers of a corporation "all the estate and assets of every kind belonging to such corporation," do not enable the receivers of a bank to sue its stockholders under its charter (Acts 1888, ch. 294), making them liable "to the amount of their respective share or shares of stock in this corporation for all of its debts" the indebtedness being to the creditors, and not to the corporation.—COLTON V. MAYER, Md., 45 Atl. Rep. 874.

8. BILLS AND NOTES—Assignment—Parties.—Rev. St. 1881, § 276 (Burns' Rev. St. 1894, § 277; Horner's Rev. St. 1897, § 276), provides that when an action is brought by the assignee of a claim arising out of a contract, and not assigned by indorsement in writing, the assignee shall be made a defendant. Held that, where the complaint in an action on notes alleged that they were assigned to plaintiff, the assignor should have been joined, where it did not appear that the assignment was by indorsement.—CARSKADDEN V. PINE, Ind., 56 N. E. Rep. 844.

9. BILLS AND NOTES—Notes—Payable from Particular Fund.—Where the articles of association of a joint-stock company whose property was vested in trustees empowered such trustees to borrow money for purposes of the association, and provided that any debt incurred therefor should be a lien upon the property and funds of the association, but that the trustees should have no power to bind the shareholders personally, one who loaned money to the trustees, taking their note therefor, secured by collateral, and containing an express statement that it was given under such articles, and not otherwise, cannot, unless special circumstances are alleged, maintain an action thereon against shareholders.—BANK OF TOPEKA V. EATON, U. S. C. C., D. (Mass.), 100 Fed. Rep. 8.

10. BILLS AND NOTES — Note for Patent Right — Innocent Purchaser.—Under Sand. & H. Dig. §§ 493-496, providing that all negotiable instruments given by citizens of this State in consideration of patented machines or patent rights shall be absolutely void unless they show upon their face that they were executed for such consideration, a negotiable note given by a citizen of the State for a third interest in patent right territory for a wire fence duly patented by United States letters patent, which does not show on its face that it was given for a patent right, is void in the hands of a purchaser for a valuable consideration.—WYATT V. WALLACE, Ark., 55 S. W. Rep. 1105.

11. BUILDING AND LOAN ASSOCIATION—Usury.—The plaintiff contracted for a loan from a building association, and executed to it a penal bond which specified that the contract should not be construed to provide for more than the highest rate of interest allowed by the laws of the State, and plaintiff also executed a deed of trust to secure the loan, which fixed the rate of interest at 6 per cent. Held, that the rate agreed on by the parties was 6 per cent.—CHEEK V. IRON BELT BLDG. & LOAN ASSN., N. Car., 35 S. E. Rep. 463.

12. CARRIERS OF GOODS—Foreign Consignment—Customs Duties.—When defendant agreed to carry plaintiff's goods from a point in the State to a location in Canada for a certain freightage, and to advance the customs duties, and collect both the freight and duties at the destination, the contract was indivisible, and the agreement to advance the duties was not a separate and foreign contract.—WALDRON V. CANADIAN PAC. RY. CO., Wash., 60 Pac. Rep. 653.

13. CARRIERS OF GOODS — Refrigerator Cars.—A railroad company which uses the cars owned and prepared for use by a refrigerator company for the transportation of fruits consigned to it by shippers is under the same obligation, as to shippers, to care for the fruit, as it would have been had the refrigerator cars belonged to it.—NEW YORK, ETC. R. CO. V. CROMWELL, Va., 35 S. E. Rep. 444.

14. CHATTEL MORTGAGES—Description of Property.—The Connecticut statutes, which require a chattel mortgage, where possession is retained by the mortgagor, to be executed, acknowledged, and recorded as mortgages of land, and require the latter to be "subscribed" by the grantor, do not render a chattel mortgage invalid because the property is described in schedules therein referred to as "attached and made a part hereof," although such schedules are not subscribed, where they are recorded as a part of the mortgage, and no question of their identity is made.—AMERICAN SURETY CO. OF NEW YORK V. WORCESTER CYCLE MFG. CO., U. S. C. C., D. (Conn.), 100 Fed. Rep. 40.

15. CHATTEL MORTGAGES—Equity of Redemption.—A mortgagor, who offered to pay the note secured by a chattel mortgage on the day it fell due, and tendered the mortgagee the amount due after he had taken possession of the property, was entitled to file a bill in equity to redeem the property, since he had no remedy at law.—LEAPOLD V. MCCARTNEY, Colo., 60 Pac. Rep. 640.

16. CONSTITUTIONAL LAW—Health—Compulsory Vaccination.—Laws 1893, ch. 214, § 28, providing that the authorities of any city or town may make regulations for the vaccination of its inhabitants, and impose penalties for non-compliance therewith, is a proper exercise of the police power of the State to legislate for the public welfare.—STATE V. HAY, N. Car., 35 S. E. Rep. 459.

17. CONSTITUTIONAL LAW — State Treasury Warrants. —A warrant drawn by State authorities in payment of an appropriation made by the legislature for a debt due from the State to an individual, and payable upon presentation if there be funds in the treasury, cannot be deemed a bill of credit in violation of U. S. Const. art. 1, § 10, or to be a treasury warrant intended to circulate as money in violation of Tex. Const. 1845, art. 7, § 8, although the State directs its officers to receive such warrants as money in payment of certain dues to the State, and to deliver them to those who would receive them as money in payment of dues from the State, but not to reissue them when once they come back to the treasury of the State.—HOUSTON & TEXAS CENTRAL RY. CO. V. STATE OF TEXAS, U. S. S. C., 20 Sup. Ct. Rep. 545.

18. CONSTITUTIONAL LAW—Statutes — Dentistry.—Act 1896, ch. 378, § 5, requiring graduates of colleges "authorized to grant diplomas in dental surgery" to pass an examination before being permitted to practice dentistry in the State, but enabling the examining board to waive an examination of a graduate of a regular college of dentistry, does not confer an arbitrary or unreasonable authority on the board, thereby authorizing a deprivation of property or liberty without due process of law, within the Declaration of Rights,

art. 23, and Const. U. S. Amend. 14.—STATE v. KNOWLES, Md., 45 Atl. Rep. 877.

19. CONTRACT — Acceptance of Offer — Approved Application for Loan. — Application for a mortgage loan made to a life insurance company upon a blank form furnished by the company, when signed by the owners of the property, and indorsed with the approval of the finance committee of the company, who had power to make the loan, constitutes a contract binding on both parties.—NEW YORK LIFE INS. CO. v. LORD, U. S. C. C. of App., Sixth Circuit, 100 Fed. Rep. 17.

20. CONTRACTS—Evidence.—In an action on a contract whereby plaintiff agreed to erect one monument of the best quality of Westerly granite, it was for the jury to determine from all the evidence whether the shades of color in the monument erected were the shades produced by the quality of granite called for by the contract; and it was proper to refuse to allow a witness to state to what extent the shade of color of the granite ought to be the same, to make a monument of the best Westerly granite of the dimensions specified in the contract. — GITHENS v. MCDONNELL, Ind., 56 N. E. Rep. 855.

21. CONTRACTS—Manufacture of Machines—Compliance with Model—Defects.—Where plaintiff contracted to make a number of tobacco transplanting machines for defendant according to defendant's model, except to furnish "steel shoes instead of cast-iron," but did not guaranty the working of the machines, it was error, in an action for the price, to instruct the jury that plaintiff was bound to use a quality of steel in the shoes that would scour in the soils of the country where the machines were to be used; the only obligation imposed by the contract being that the machines should be free from any latent defect growing out of the process of manufacture.—J. THOMPSON MFG. CO. v. GUNDERSON, Wis., 82 N. W. Rep. 299.

22. CONTRACT—Public Policy—Mortgage Foreclosure. —A contract whereby one agrees not to bid at a chattel mortgage sale is contrary to public policy, and a note given in pursuance of such contract is unenforceable.—MCCLELLAND v. CITIZENS' BANK, Neb., 82 N. W. Rep. 319.

23. CONTRACTS—Restraint of Trade—Construction.— Where an agreement recited that the parties had been engaged in the coal business in a certain township, and that defendant for a valuable consideration, transferred his interest to plaintiff, and covenanted to aid him in every way, except financially, for five years, and that he would not enter the coal business for five years, the agreement not to enter the business is to be construed as referring to that township alone, since the balance of the contract was with reference to that place.—MELICK v. FOSTER, N. J., 45 Atl. Rep. 911.

24. CONTRACT — Stock Subscription Agreement. — Where defendants entered into an agreement with plaintiff's assignor, by the terms of which the latter agreed to build a butter factory, and to supply a competent butter maker for one year, in consideration of certain subscriptions, for which stock in a corporation to be formed by the subscribers was subsequently to be issued, plaintiff's assignor was not required to wait until all the stock necessary to incorporation had been subscribed, before suing on the subscriptions.—ADA DAIRY ASSN. v. MEARS, Mich., 82 N. W. Rep. 258.

25. CONTRACT TO FURNISH ICE—No Quantity Stated—Mutuality of Obligation.—A contract by the terms of which the sellers agreed to furnish and the purchasers agreed to buy all the ice necessary to carry on their business in a certain locality for a period of five years from date at 75 cents per ton, is not void for want of mutuality, as the quantity to be taken is measured by the necessities of the business, which is presupposed to continue for the time agreed.—KICKEY v. O'BRIEN, Mich., 82 N. W. Rep. 241.

26. CORPORATION—Actions—Shares of Stock as Personal Property.—Shares of stock in a Michigan corporation, being by the laws of that State deemed personal property, must be so considered within the meaning of the act of congress of March 3, 1875, authorizing an order to bring in absent defendants who are not inhabitants of or found within the district in a suit to remove any incumbrance or lien or cloud upon the title to real or personal property within the district where such suit is brought.—FELIX JELLENIK v. HURON COPPER MINING COMPANY, U. S. S. C., 20 Sup. Ct. Rep. 559.

27. CORPORATION — Foreign Corporations—Power of State to Exclude—Repeal of Statute by Unconstitutional Act.—A forfeiture of the permission to a foreign corporation to do business in the State for violation of the provisions of Texas act 1889, under which the permit was given, and which provides for the forfeiture, does not violate any contract obligation, as the provision for the forfeiture was a part of the obligation.—WATERS PIERCE OIL COMPANY v. STATE OF TEXAS, U. S. S. C., 20 Sup. Ct. Rep. 519.

28. CORPORATIONS—Guaranty—Authority of President —Ultra Vires.—Defendant, a manufacturing corporation, guarantied payment by the S Co. for finishing a certain product of the latter. The S Co. was indebted to defendant, and had given it an order for the proceeds of the sale of the product which the plaintiff was employed to finish, and the defendant did receive a large sum of money from the sale thereof. Held, that the defendant was liable on the guaranty, as it was given to secure a benefit, and that defendant would not be allowed to claim that the giving of the guaranty was *ultra vires*, when it had received the benefit therefrom.—FLINT & W. MFG. CO. v. KERR-MURRAY MFG. CO., Ind., 56 N. E. Rep. 858.

29. CORPORATIONS — Indorsement of Note by President.—Defendant corporation is not liable on its indorsement by its president of a note given by P to plaintiff; there being no authority for the president to make the indorsement; authority therefore being in its treasurer as defined by its by-laws; there being no previous course of dealing of the same kind between plaintiff and defendant; and defendant having received no benefit from the indorsement—though the article for which the note was given was put into defendant's plant; it having been sold by plaintiff to P and put into the plant as part of P's contract to construct the same, and P having been paid in full for such construction before the indorsement was made.—WORTHINGTON v. SCHUYLKILL ELECTRIC RY. CO., Penn., 45 Atl. Rep. 927.

30. CORPORATIONS—Receivers—Powers.—In administering the affairs of an ordinary insolvent private business corporation, for which a receiver has been appointed, a court has not power to authorize the receiver to make an indebtedness incurred for carrying on the business, without reference to preserving the property, a lien on the *corpus* of the property, superior to that of prior lienholders, without their consent; such doctrine being applicable only to insolvent railroad corporations. — INTERNATIONAL TRUST CO. v. UNITED COAL CO., Colo., 60 Pac. Rep. 621.

31. CORPORATIONS — Stocks — Guaranty as to Dividends.—An agreement whereby a stated dividend is guarantied on stock subscribed in a corporation in which the subscriber is interested, and desirous of seeing succeed, and which runs to the subscriber merely, without any mention of his executors, administrators, or assigns, is a guaranty for the payment of such dividend for a reasonable time only, and during the life of the subscriber, and is not a continuing one for the life of the corporation, upon which the heirs or personal representatives of the subscriber can recover. —ROTCH v. FRENCH, Mass., 56 N. E. Rep. 893.

32. CORPORATIONS — Stockholders' Liability.—Under Hill's Ann. St. & Codes Wash. § 1511, providing that bank stockholders shall be liable to the creditors to the amount of the par value of the stock in addition to the amount invested in such stock, the liability of the stockholders is a substantive right, and is enforceable against a resident of the State who is a stockholder in

such insolvent corporation in the State of Washington. —HOWARTH V. LOMBARD, Mass., 56 N. E. Rep. 888.

33. CORPORATIONS—Suit by Stockholder.—A provision in a lease by a corporation for a reference in case of difference between the parties in relation thereto is not void because the lessee owns a majority of the stock of the lessor, and cannot be avoided, in a suit by a stockholder of the lessor to assert its rights against the lessee, on any presumption that the officers of the lessor and lessee would conclusively select referees favorable to the lessee, and that they would decide in favor of the lessee, regardless of the facts.—WOLF V. PENNSYLVANIA R. CO., Penn., 45 Atl. Rep. 936.

34. CREDITORS' SUIT—Action Against Curator.—Where life insurance policies, payable to the insured or his assigns, were assigned by him to his wife and children, the children have an interest therein, so as to make them proper parties to an action by a creditor of the insured seeking to subject to the payment of his claim proceeds of the policies in the hands of their curator, and claimed by them under the assignment.—JUDSON V. WALKER, Mo., 55 S. W. Rep. 1083.

35. CRIMINAL LAW—Burglary.—A conviction, on an information for burglary of a "warehouse building," under 2 Ballinger's Ann. Codes & St. § 7104, defining burglary of a "warehouse," or of the burglary of "any building in which goods, merchandise, and valuable things are kept for use, sale, or deposit," etc., will not be disturbed, as the use of the word "building" in connection with "warehouse" does not change the meaning of the word "warehouse."—STATE V. DOLSON, Wash., 60 Pac. Rep. 653.

36. CRIMINAL LAW—Grand Jury.—The presence of a person in the grand jury room, and his making statements charging the guilt of a person who was afterwards indicted, are not sufficient to quash the indictment, where his acts and statements exerted no influence on the jury.—STATE V. BACON, Miss., 27 South. Rep. 563.

37. CRIMINAL LAW—Homicide—Counsel—Information —Self-Defense.—Where the defendant entered the home of deceased, and in a difficulty which arose showed a pistol, and told deceased that he would resent any attack, and a few minutes afterwards shot deceased, and the plea was self-defense, an instruction that "no man has a right to kill when there is an opportunity afforded him to escape or flee from the danger, a party must avail himself of any apparent means of escape,"—though incorrect as a general statement of the law, was applicable in consideration of the fact that defendant was a trespasser and in the wrong, and hence was not reversible error.—PEOPLE V. FLANNELLY, Cal., 60 Pac. Rep. 670.

38. CRIMINAL LAW—Homicide—Self Defense.—Where the court instructed that, to justify a homicide, it must "appear" that the danger was so urgent that the killing was absolutely necessary, the error, if any, was harmless, when the court further instructed that killing is justifiable when a person apprehends that another is about to do him great bodily injury, and has reasonable ground for so believing, and that the jury must consider the circumstances as they "appeared to the defendant" at the time.—WILSON V. TERRITORY, Ariz., 60 Pac. Rep. 697.

39. CRIMINAL LAW—Larceny.—Under Rev. St. § 4415, declaring that a bailee of money or property, who shall fraudulently convert the same to his own use, shall be guilty of larceny, one who procured a time check to be discounted at a bank, and through an error was given more money than the check called for, and afterwards, on discovering that he had been overpaid, refused to refund, was guilty of larceny.—BERGERON V. PEYTON, Wis., 82 N. W. Rep. 291.

40. CRIMINAL LAW—Larceny—Good Faith.—Where, on trial for larceny, the defense was that defendant took the property as the agent of another, believing it to be the property of such other, an instruction that if he took possession of the property on claim of ownership in his principal he would not be guilty of larceny, even though he was mistaken as to such ownership, if the taking was in good faith, is proper.—PEOPLE V. SLAYTON, Mich., 82 N. W. Rep. 205.

41. CRIMINAL LAW—Receiving Stolen Goods.—A mere proof of an unexecuted agreement, entered into after a larceny, to participate in the sale of the goods known to have been stolen, will not warrant conviction for receiving stolen goods.—COMMONWEALTH V. LIGHT, Penn., 45 Atl. Rep. 933.

42. DAMAGES — Liquidated Damages.—Since the breach of an agreement for the protection of a tenant against being ousted, before the expiration of his lease, is one that cannot be measured in damages, a sum agreed to be paid by a lessee to his sublessee, as liquidated damages, in the event of the latter being ousted through the acts of the former before the expiration of the lease, must be construed as liquidated damages, and not as a penalty.—GUERIN V. STACEY, Mass., 56 N. E. Rep. 892.

43. DECEIT—Insolvent Bank—Directors—Liability for Deposits.—Bank directors are not liable in a common-law action of deceit for statements made to the secretary of state as to the bank's condition, as required, under penalty, by Rev. St. 1889, § 2752, which, though false, they honestly believed were true, and which were based in good faith on details furnished them by the cashier, whose reputation was good.—UTLEY V. HILL, Mo., 55 S. W. Rep. 1091.

44. DEDICATION — Revocation — Public Use.—Where the owner had dedicated land to the public use whenever the municipal authorities should choose to so use it, the dedication was irrevocable, and it was unnecessary for the city to prove a user or formal acceptance. —MAYOR, ETC. OF ATLANTIC CITY V. GROFF, N. J., 45 Atl. Rep. 916.

45. DEEDS—Construction — Easements.—Where, in a conveyance by an original grantor of the use of an alley to the plaintiffs, no mention was made of any particular lots, but it clearly appeared, from the situation of certain lots owned by the plaintiffs, and the availability of the alley to be used in connection with them, that they were the lots intended, the deed will be considered as granting the alley as an appurtenance to such lots.—DURKEE V. JONES, Colo., 60 Pac. Rep. 618.

46. DEEDS—Construction—Parol Evidence.—Where a quitclaim deed provided that the premises were to be occupied and used by the grantee to work and operate a mine, the grantee to erect and maintain necessary gates and bars for entering on such premises through the fences of the grantor, etc., and to the *habendum* clause were added the words, "For the uses and purposes aforesaid and on the conditions hereinbefore specified," there was sufficient uncertainty as to the intention of the parties to justify a resort to parol evidence of circumstances under which it was made in order to properly construe such deed.—BAKER V. CLARK, Cal., 60 Pac. Rep. 677.

47. DEEDS—Trusts — Remainders.—Grantor disposed of a remainder in his property by a deed declaring a trust to sell such property and divide the proceeds thereof among the issue of the body, *per stirpes*, if there should be such issue living at the time of his death; otherwise, to pay over the same to his heirs at law. Held not to create a present interest in such children, and that the only persons entitled to share in the property, or the proceeds thereof, were grantor's children living at the time of his death, and the issue of those who were then dead, *per stirpes*.—VASHON'S EX'X V. VASHON, Va., 35 S. E. Rep. 457.

48. DIVORCE — Appeal — Abatement.—Where a wife died during the pendency of an appeal in an action for divorce, the action abated, and the appellate court had no power to review the action of the trial court; and, since Code Civ. Proc. § 1021, provides that costs are not taxable until a judicial determination is had in the action, there could be no recovery of costs.—BEGBIE V. BEGBIE, Cal., 60 Pac. Rep. 667.

49. ELECTION — Candidate—Death.—When the candidate for an office for whom a majority or plurality of votes was cast at the election dies on the election day, and before the polls were closed, the candidate for the same office receiving the next highest number of votes is not thereby elected, nor has he thereby acquired any right to be inducted into the said office.—STATE v. SPEIDEL, Ohio, 56 N. E. Rep. 871.

50. EQUITY — Fraud — Remedy.—Under 2 How. Ann. St. § 6592 (Miller's Comp. Laws, § 415), providing that "the several circuit courts shall be courts of chancery within and for their respective counties," and section 6611 (433), providing that the powers and jurisdiction of the circuit courts in chancery "shall be co-extensive with the powers and jurisdiction of the courts and judges in chancery in England," the circuit court has no jurisdiction in chancery of a bill against a village and its officers to recover a money judgment on village bonds, when no injunction is asked, and there is an adequate remedy at law, although the bill alleges fraud in the issue of the bonds.—MACK v. VILLAGE OF FRANKFORT, Mich., 82 N. W. Rep. 209.

51. EQUITY—Jurisdiction — Remedy at Law.—A court of equity has no jurisdiction of injunction proceedings to try title to a political office, since there is an adequate remedy at law.—ARNOLD v. HENRY, Mo., 55 S. W. Rep. 1089.

52. ESTOPPEL — Municipal Taxation — Exemption.—Where petitioner requested the passage of an ordinance exempting a corporation from municipal taxation, the passage of which ordinance influenced such corporation in the location of its plant within the municipality, and petitioner's dividends from stock in such corporation amount to more than his increase of taxes caused by such exemption, he is estopped to ask relief from such exemption.—ROSS v. CITY OF GAFFNEY CITY, S. Car., 35 S. E. Rep. 439.

53. EVIDENCE—Parol Authority of Agent.—Parol testimony of an agent that he had authority to issue a license to cut wood on his principal's land should not be admitted where it appears that the agent's authority is in writing, and the writing is in existence, and can be produced.—EMERY v. KING, N. J., 45 Atl. Rep. 915.

54. FIXTURES—Replevin.—Curtains, window screens, screen doors, a table or sideboard, a hot-water tank, a windmill, globes for electric and gas lights, and gas and electric light fixtures, affixed to mortgaged premises, are not property which follows the realty.—HALL v. LAW GUARANTEE & TRUST SOC., LIMITED, OF LONDON, ENG., Wash., 60 Pac. Rep. 643.

55. FRAUDULENT CONVEYANCE — Attachment—Creditors' Suit.—Since a creditor cannot sue to set aside a debtor's conveyance as fraudulent until he has acquired a lien on the property by judgment or attachment, plaintiff was not entitled to maintain such action on submitting the record of an action which showed that he had attached defendant's goods, but did not show whether or not the attachment was prior to his action to set aside the conveyance.—HIRSCH v. FIRST NAT. BANK OF MCMINNVILLE, Oreg., 60 Pac. Rep. 603.

56. FRAUDULENT CONVEYANCES—Insolvency—Preferring Creditors.—Defendants owning certain property, the value of which was less than their indebtedness, entered into the formation of a corporation with certain creditors whom they wished to prefer. Defendants' property was transferred to the corporation, and the included creditors were given stock to cover their respective indebtedness, which more than exhausted the property. Held that, no specific intent to defraud being shown, the transaction was not fraudulent, as the defendants had a right to deal with their property in any manner they deemed was for its betterment, and had a right to prefer creditors.—TROY v. MORSE, Wash., 60 Pac. Rep. 348.

57. FRAUDULENT CONVEYANCES — Knowledge of Grantee.—A sale of chattels in satisfaction of a note and mortgage covering the same cannot be declared fraudulent, as against other creditors, under a finding that plaintiff purchased the chattels without knowledge that the seller had debts due to others than herself.—MORSE v. VELZY, Mich., 82 N. W. Rep. 225.

58. GARNISHMENT—Attachment in Foreign Jurisdiction.—The garnishment of a Connecticut corporation for a debt due a resident of North Carolina by a creditor of the latter in an action commenced in Pennsylvania, service being made upon an agent of the garnishee in the latter State, is not a defense to an action against the garnishee for the recovery of the same debt brought by its creditor in North Carolina as the debt had no *situs* in Pennsylvania to give jurisdiction.—STRAUSE v. ÆTNA INS. CO., N. Car., 35 S. E. Rep. 471.

59. HUSBAND AND WIFE—Dedication of Land to Public Use.—Prior to the act of March 19, 1887, "to define the rights and liabilities of husband and wife" (84 Ohio Laws, p. 132), it was not competent for a married woman to dedicate to public use any lands which were a part of her general estate, except in the mode prescribed by statute.—WESTLAKE v. CITY OF YOUNGSTOWN, Ohio, 56 N. E. Rep. 873.

60. HUSBAND AND WIFE—Liability for Necessaries.—Both the husband and wife are liable for debts contracted by the wife for necessaries after she has been abandoned by her husband.—PALMER v. COGHLAN, Tex., 55 S. W. Rep. 1122.

61. HUSBAND AND WIFE—Married Woman's Contracts.—Burns' Rev. St. 1894, § 6964 (Rev. St. 1881, § 5119; Horner's Rev. Stat. 1897, § 5119), declares that a married woman shall not enter into a contract of suretyship, as indorser, guarantor, or in any other manner, and that such contract shall be void. Held, that a complaint on a note executed by a married woman alone, and secured by a mortgage on her separate estate, need not allege that her contract was not one of suretyship.—FIELD v. NOBLETT, Ind., 56 N. E. Rep. 841.

62. HUSBAND AND WIFE—Purchase of Land — Vendor's Lien.—A married woman who has accepted a deed to land is estopped to deny the vendor's right to subject the land to the payment of the purchase price, though the notes given by her for the purchase money were signed by her alone, and are void by reason of her coverture.—WELLER v. MONROE, Ky., 55 S. W. Rep. 1078.

63. INDICTMENT FOR MANSLAUGHTER.—Under an indictment for manslaughter, framed according to Cr. Proc. Act, § 45, charging that defendant "did feloniously kill and slay deceased," the defendant can be convicted for assault and battery.—STATE v. THOMAS, N. J., 45 Atl. Rep. 913.

64. INJUNCTION—Personal Levy.—Injunction will not lie against the collection of a personal property tax where it was levied without fraud for a purpose authorized by law by officers vested with legal authority, and where, if there was any illegality, it was due to an erroneous determination as to complainant's residence, which was, to say the least, an open question.—WILLIAMS v. DUTTON, Ill., 56 N. E. Rep. 868.

65. INTERVENTION—Parties—Equitable Claims.—In an action at law to recover a fixed sum due under a contract, and seeking a sequestration of defendant's property, persons claiming labor liens against such property cannot intervene jointly to enforce such liens, and to have their priority determined, where such determination involves the trial of numerous separate issues of fact, since such rights can only be adjusted by a reference and a decree in equity.—GRAVENBERG v. LAWS, U. S. C. C. of App., Fifth Circuit, 100 Fed. Rep. 1.

66. INSURANCE—Conditions—Proof of Loss.—Where a fire policy required that proof of loss be made to the company within sixty days after the fire, and provided that no action should be maintained by insured unless he has fulfilled all the requirements of the policy, an action thereon cannot be maintained when the proof of loss was not filed till four months after the fire.—WHITE v. HOME MUT. INS. CO., Cal., 60 Pac. Rep. 666.

67. INSURANCE — Reformation of Contract.—A contract of insurance, which does not express the real intention of the parties thereto, may be reformed.—COOK v. WESTCHESTER FIRE INS. CO., Neb., 82 N. W. Rep. 315.

68. INSURANCE—Valued Policy—Partial Loss.—After a partial loss under a fire policy, which renders the building untenantable, the insured is not guilty of a breach of the vacancy clause of the contract, where he permits the property to remain unoccupied pending the period during which the insurer is authorized to exercise its option to repair the damaged building.—LANCASHIRE INS. CO. v. BUSH, Neb., 82 N. W. Rep. 313.

69. JUDGMENT — Confessions of Judgment.—Confessions of judgment by a debtor to his son and brother are not in fraud of creditors, where the brother and son were not attempting to get an undue preference, where they were entered at the same time as judgments by the creditors, and the evidence showed that they represented sums actually due.—MECHANICS' BUILDING & LOAN ASSN. v. FOWLER, S. Car., 35 S. E. Rep. 433.

70. JUDGMENT—Correction—Clerical Mistake.—A clerical mstake in a judgment, whereby it fails to correctly express the decision announced, may be corrected by the court without regard to time, saving the rights of innocent third persons, if no equity of any party to the record be thereby violated.—BOSTWICK v. VAN VLECK, Wis., 82 N. W. Rep. 302.

71. LANDLORD AND TENANT—Lease — Implied Covenants.—A lease of an infant's land by a natural guardian, who was not the guardian of the estate, expires with the death of the guardian.—MAXWELL v. URBAN, Tex., 55 S. W. Rep. 1124.

72. LANDLORD AND TENANT — Lease of Dangerous Premises.—The owner of property having a dangerous excavation thereon, known to him, who leases it to another to be run as a hotel and restaurant, without making reasonable provision for the protection of its patrons from falling in said excavation, is liable for the damage resulting therefrom.—COPLEY v. BALLE, Kan., 60 Pac. Rep. 656.

73. LANDLORD AND TENANT — Unrecorded Lease.—Where a crop mortgagee had no actual notice of a covenant contained in an unrecorded lease of his mortgagor with the landlord to give a crop mortgage on the crop to be grown, as additional security for the payment of rent, but had knowledge of the lease, the lessor, the term and the cash rent to be paid, and had searched the records, a finding that he had constructive notice of the covenant will not be sustained; these facts not being sufficient to put him on inquiry, as the covenant was of an unusual nature, and the effect of constructive notice of a lease is confined to the ordinary covenants therein.—WILKERSON v. THORP, Cal., 60 Pac. Rep. 680.

74. LIBEL AND SLANDER—Subsequent Conduct—Evidence.—In an action for libel, in charging that plaintiff and A were found in a haymow in a compromising position, where the evidence tended to show such fact, and that there had been previous acts of intimacy, evidence that three months later plaintiff and A were seen together at a certain place, embracing and kissing each other, was admissible.—MATHEWS v. DETROIT JOURNAL CO., Mich., 82 N. W. Rep. 243.

75. LIBEL AND SLANDER — Words Actionable—Questions for Jury.—Where defendant stated that, if plaintiff had been a decent woman, he would have put her and her husband on his farm, but that she was not decent and respectable, the question whether the words imputed to plaintiff a want of chastity is for the jury.—DERHAM v. DERHAM, Mich., 82 N. W. Rep. 218.

76. LIMITATION OF ACTIONS—Commencement of Action.—The filing of a petition in the clerk's office, and the issuing of summons thereon, suspends the running of the statute of limitations, though the clerk may fail in his duty to see to the delivery of the summons to the sheriff.—BLACKBURN v. CITY OF LOUISVILLE, Ky., 55 S. W. Rep. 1075.

77. MALICIOUS PROSECUTION—Evidence.—One is not liable for malicious prosecution because the binding over was after the prosecution was barred by limitations, he not having persisted in the prosecution after knowing it was barred.—WENGER v. PHILIPS, Penn., 45 Atl. Rep. 927.

78. MALICIOUS PROSECUTION—Evidence—Reasonable Cause.—Where the defendant in an action for malicious prosecution had no evidence that plaintiff had forged a note, the fact that defendant had received a letter from the maker, stating that the note was a forgery, and that he believed such statement, did not constitute a reasonable cause for instituting criminal proceedings against plaintiff. — HUTCHINSON v. WENZEL, Ind., 56 N. E. Rep. 845.

79. MANDAMUS—To Compel Entry of Judgment by Default.—A writ of *mandamus* may lie to compel a court to enter judgment by default, where it erroneously declines to take jurisdiction of the case after sufficient service on the defendant, who does not appear, except specially to contest the jurisdiction.—JONAS GROSSMAYER, PETITIONER, U. S. S. C., 20 Sup. Ct. Rep. 535.

80. MASTER AND SERVANT—Contract of Employment.—The use of the term "general superintendent" in a written contract of employment does not render it so ambiguous as to make the contract void, since the parties must be deemed to have used the term in the sense in which it would be understood by those engaged in the same kind of business.—SCHAUB v. ARC WELDING CO., Mich., 82 N. W. Rep. 235.

81. MASTER AND SERVANT—Defective Fence — Knowledge of Defects.—Though a railway company owes no duty to a servant operating its trains to fence its right of way, yet, having done so, such servant has a right to assume that the fence will be kept in repair, and may recover for injuries resulting from a collision with stock coming on the track through a defective fence, unless the servant knew of such defect.—HOUSTON, ETC. RY. CO. v. QUILL, Tex., 55 S. W. Rep. 1126.

82. MASTER AND SERVANT — Injuries to Servant.—Where an employee was injured while dumping pots of molten copper, by one of the pots exploding when dumped by him at a place where there was water, an instruction that it was the duty of the master to warn plaintiff that an explosion might result from the contact with water, and of the "nature, force, and probable effect" of such an explosion, was not erroneous, as imposing on the master the duty of foretelling the precise result of any possible explosion.—RIBICH v. LAKE SUPERIOR SMELTING CO., Mich., 82 N. W. Rep. 279.

83. MASTER AND SERVANT — Medical Treatment of Servant.—An employee in a laundry seriously injured her hand. The forewoman of the shop called the plaintiff, a physician, to attend her, which he did at the laundry, at her home, and at his office, until the wound was healed, and he claimed compensation for his services from defendants. No authority in the forewoman to represent the firm was shown except in her general management of the laundry in the absence of one of the defendants. Plaintiff never had any conversation with any one but the forewoman, who stated that she did not know what the firm would do about it. Held, that defendants were not liable for the services.—HOLMES v. MCALLISTER, Mich., 82 N. W. Rep. 220.

84. MASTER AND SERVANT — Safe Place to Work.—The rule that it is the duty of a master to provide his servant with a reasonably safe place in which to work is not an absolute one, but is qualified and limited by the other rule, that the servant assumes all the ordinary risks incidental to the service, so far as those risks at the time of entering upon the service are known to him, or should be readily discernible to a person of his age and capacity, in the exercise of ordinary care, whether the business is dangerous or not. Such rules do not deprive the master of the right to manage and conduct his business according to his own judgment, even though other methods might be safer; and where

the place provided by him for the servant to work is free from dangers which are latent or not obvious, or he has instructed the servant, upon entering his service, expressly as to such dangers, if they exist, he has fulfilled his duty in the premises.—BETHLEHEM IRON CO. v. WEISS, U. S. C. C. of App., Third Circuit, 100 Fed. Rep. 45.

85. MECHANICS' LIENS — Materials—Proof.—Code Civ. Proc. § 2130, declares that one furnishing material for a building shall have a lien thereon for such material; and Civ. Code, § 1076, declares that a thing is affixed to land when it is permanently attached to the building, as by cement, plaster, nails, bolts, and screws. Held, that a cover for a stovepipe flue, opening into the chimney from the interior of a building, and removable when such flue was to be used, was not material entering into the construction of the building, nor a fixture, and hence such building was not subject to a lien therefor.—MISSOULA MERCANTILE CO. v. O'DONNELL, Mont., 60 Pac. Rep. 594.

86. MECHANICS' LIENS — Statutory Provisions — Material-Men.—Const. art. 16, § 37, provides for mechanics' and material-men's liens, and that the legislature shall provide by law for the enforcement of said liens. Rev. St. arts. 3296, 3308, were thereafter enacted to enforce liens for material under such provision. Held, that a failure of a material-man to comply with the requirements of the statute defeats his lien claim, under the constitution.—BERRY v. MCADAMS, Tex., 55 S. W. Rep. 1112.

87. MINING LEASE — Extension — Notice.—Where a lease under which plaintiffs held a mine for 10 years provided for an extension at their option on giving the lessor notice in writing 20 days previous to the expiration of the lease, on failure to give notice in due time, by reason of their own negligence, plaintiffs were not entitled to a relief in equity, there being no fraud or accident shown, the option for extension being purely a privilege without any corresponding right given to the lessor.—DIKEMAN v. SUNDAY CREEK COAL CO., Ill., 56 N. E. Rep. 864.

88. MORTGAGE — Action on Note—Pleading.—A mortgagee may abandon the mortgage and sue on the note, or may foreclose and apply the proceeds on the note, but, in the absence of agreement, is not obliged to proceed otherwise.—FRYE v. MEYER, Wash., 60 Pac. Rep. 655.

89. MORTGAGES — Payment — Life Tenant and Remainder Man.—A payment on a mortgage executed by a life tenant and a remainder-man was credited as having been paid by the life tenant, but it was sought to be shown that it was paid with the remainder-man's money. It appeared that the remainder man drew an amount from his account at a building association equal to the payment, and that the check received by him therefor was indorsed by the mortgagee, and that the mortgagee was credited with such sum at his bank. There was also testimony that the life tenant said that it was the remainder man's money which was paid on the mortgage. Held, that the remainder-man, and not the life tenant, was entitled to be credited with the payment.—WEBER v. LAUMAN, Md., 45 Atl. Rep. 870.

90. MUNICIPAL BONDS—Defenses — Estoppel by Recitals.—A municipal corporation having the power to issue bonds for the refunding of its indebtedness, and having exercised that power by passing an ordinance directed to that purpose, and by issuing negotiable bonds in due form, reciting that they are issued in conformity with the statute, and that all the requirements of the law have been duly complied with, and all the conditions precedent exist, cannot deny its obligation as against a *bona fide* holder, who purchased such bonds for value, before maturity, and defeat a recovery thereon, by showing that the recitals are false, and were made for the purpose of enabling the corporation to market the bonds, which were in fact issued for an unauthorized and illegal purpose.—VILLAGE OF KENT v. DANA, U. S. C. C. of App., Sixth Circuit, 100 Fed. Rep. 55.

91. MUNICIPAL CORPORATIONS — Improvements—Constitutional Law.—Comp. Laws 1897, § 3406, providing that, if a city council believe that a portion of the city in the vicinity of a proposed improvement will be benefited thereby, they may determine that the whole or any just proportion of the compensation awarded shall be assessed on the owners of the land deemed to be benefited, and that they shall then, by resolution, fix the district benefited, and specify the amount to be assessed on the owners of the taxable real estate therein, etc., is not unconstitutional, as taking property without due process of law, in that it provides no notice to such owners of the hearing in relation to the establishment of the assessment district and to the amount of the total assessment.—VOIGT v. CITY OF DETROIT, Mich., 82 N. W. Rep. 253.

92. MUNICIPAL CORPORATIONS—Removal of Garbage—Ordinance.—A city ordinance requiring all refuse accumulations of animal, fruit, or vegetable matter to be placed in receptacles for removal by the city was not invalid on the ground that it controlled the disposition of wholesome substances without leaving the owner liberty to use or dispose of such substances, since the ordinance only affected discarded matter unfit for food.—CITY OF GRAND RAPIDS v. DE VRIES, Mich., 82 N. W. Rep. 269.

93. MUNICIPAL CORPORATIONS — Street Assessments—Payment under Protest.—Payment of assessments under protest, to avoid the sale of the property therefor, is not a voluntary payment, so as to preclude recovery of money so paid.—WHITTAKER v. CITY OF DEADWOOD, S. Dak., 82 N. W. Rep. 202.

94. MUNICIPAL CORPORATIONS — Street Grades — Surface Water — Diversion.—Where a municipal corporation so changed the grade of its streets as to divert its natural drainage, and discharge on plaintiff's lot large quantities of water, filth, and dirt, a complaint in an action for such injury was not demurrable for failure to allege that the corporation had knowledge or notice of the injury complained of, since, being an original wrongdoer, it was not entitled to notice before being sued for injury resulting from its wrongful act.—GUEST v. COMMISSIONERS OF CHURCHHILL, Md., 45 Atl. Rep. 882.

95. MUNICIPAL CORPORATIONS—Water Supply—Pollution.—In a prosecution for pollution of a city's water supply under an ordinance passed under 2 Mills' Ann. St. § 4403, subd. 68, giving cities jurisdiction over rivers for five miles above the point from which their water supply was taken, it was no defense that another city was also within five miles of the place where the alleged pollution occurred, and might also claim jurisdiction to punish defendant; for in such case the pollution of the waters would be two distinct offenses against the two sovereignties.—CITY OF DURANGO v. CHAPMAN, Colo., 60 Pac. Rep. 635.

96. NEGLIGENCE—Collision—Bicycle and Team.—The rider of a bicycle having, under an ordinance and Act April 23, 1889, the same right, subject to the same restrictions, as one driving a team, to the right-hand side of the street, he need not take the other side for an ordinary team, under the exception to the law of the road, that a light vehicle must give way to a heavily laden wagon.—FOOTE v. AMERICAN PRODUCT CO., Penn., 45 Atl. Rep. 934.

97. NEGLIGENCE — Defective Bridge — Notice of Defects.—A recovery cannot be had for negligence in failing to keep a bridge in a reasonably safe condition for travel, unless knowledge or notice of the existence of the defect, and opportunity to remedy the same, be shown, and such notice cannot be inferred from failure to seasonably inspect such bridge.—PEARL v. BENTON TP., Mich., 82 N. W. Rep. 226.

98. NEGLIGENCE—Highways — Failure to Maintain Barriers.—Where a horse leaves a highway which is in good condition, and wide enough to drive on with safety, through fright, not caused by the township's negligence, the township is not liable for injuries sustained by the driver because of its failure to maintain

barriers; the fright, and not the lack of barriers, being the cause of the accident.—BELL v. VILLAGE OF WAYNE, Mich., 82 N. W. Rep. 215.

99. NUISANCE — Master and Servant — Independent Contractors.—For the negligence of a servant of an independent contractor in throwing a piece of lime into mortar bed in the street, causing injury to a passer-by, the lot owner who employed the contractor is not liable, as the relation of master and servant did not exist between him and the contractor, the work itself was not a nuisance, and the injury did not necessarily result therefrom.—STRAUSS v. CITY OF LOUISVILLE, Ky., 82 N. W. Rep. 1075.

100. PARENT AND CHILD—Services.—A daughter who resides with her father after arriving at age, and renders him services as housekeeper, cannot recover for her services, in the absence of an express contract to pay, unless an implied contract can be inferred from the facts and circumstances which rebuts the presumption that wages were not intended to be paid.—WILLIAMS v. RESENER, Ind., 56 N. E. Rep. 857.

101. PARTNERSHIP — Corporation to Continue Business—Debts of Partnership—Assumption.—The members of a partnership engaged in the milling business agreed among themselves to incorporate for the purpose of continuing the business as a corporation. The corporation was formed, and each, according to the agreement, transferred his interest in the firm property to the corporation, receiving therefor an aliquot part of the capital stock, equal to that held by him in the firm; all of the property of the firm being in this way transferred to the corporation. Held, that the debts of the partnership became the debts of the corporation, and it is liable therefor.—ANDREWS v. MORGAN, Ohio, 56 N. E. Rep. 875.

102. PRINCIPAL AND AGENT.—An agent who made a contract for and in the name of his principal is not a party to the contract, and hence is a competent witness in a proceeding to enforce the contract.—MCDONALD v. WEBSTER'S ESTATE, Vt., 45 Atl. Rep. 895.

103. PRINCIPAL AND SURETY—Fraudulent Representation.—It was no defense to a suit on the bond of a defaulting bank clerk that the surety signed the bond on the representation of the cashier that he would run no risk in so doing; that the teller was honest, his accounts straight, and as paying teller he could not take anything—where it did not appear that such statements were authorized by the bank, or that it was in the line of the cashier's duty to make them.—LIEBERMAN v. FIRST NAT. BANK OF WILMINGTON, Dela., 45 Atl. Rep. 901.

104. PUBLIC LAND—Land Patents—Constructive Possession.—A patent for land previously patented to another is void, and does not confer upon the patentee constructive possession of the land.—GREER v. BOWLING, Ky., 55 S. W. Rep. 1081.

105. PUBLIC LAND — Pre-emption Claim—Patent to Heirs.—Where one who has taken a claim for public land dies before the issuance of a patent, and a patent is issued to his heirs on application of his widow under Rev. St. U. S. § 2269, providing that in such case the title shall inure to their heirs as if their names had been specially mentioned, a purchaser of the land from one of the heirs cannot maintain ejectment against heirs who did not join in the deed, as the title vested in the heirs as tenants in common by direct conveyance from the United States.—WITTENBROCK v. WHEADON, Cal., 60 Pac. Rep. 664.

106. QUIETING TITLE—Tax Deeds—Evidence.—Where a purchaser of property sold at a tax sale afterwards became the grantee of one who claimed a life interest in the property, the fee evidenced by the tax deed was not thereby lost or destroyed.—DOREN v. LUPTON, Ind., 56 N. E. Rep. 849.

107. RAILROAD COMPANY—Contributory Negligence.—A motorman on an electric street car may presume that one driving a carriage in front of his approaching car, and who he sees is about to turn upon the track in front of his car, will desist from so doing when he sounds the gong of his car; and he is only bound, as an ordinarily careful man, to exert efforts to stop his car after he sees that his warning is unheeded.—CAWLEY v. LA CROSSE CITY RY. CO., Wis., 82 N. W. Rep. 197.

108. RAILROAD COMPANY — Negligence—Contributory Negligence.—Plaintiff, an old man, was struck by a street car while attempting to drive across its tracks in a city street. He testified that he did not see the car approaching before he attempted to cross, though he looked in its direction to the point of a hill 75 or 80 feet distant. There was evidence that a car could be seen approaching from one to five blocks from the point where plaintiff was struck, and that the whole car could be seen when it reached the top of the hill, two blocks distant. Held, that the question of defendant's contributory negligence was for the jury.—RYAN v. DETROIT CITIZENS' ST. RY. CO., Mich., 82 N. W. Rep. 278.

109. SALE—Conditional Sales—Estoppel.—Defendants contracted to purchase an electrical machine from M, a dealer in such machines, the contract providing for part payment in a second-hand dynamo. M purchased from plaintiffs the machine with which to fill the contract, title to remain in plaintiffs until payment. Plaintiffs wrote to defendants that at the request of M they would ship the machine; that "this machine is the property of (plaintiffs) until fully paid for; the time of payment being thirty, sixty and ninety days." Defendants acknowledged receipt of the letter, and agreed to settle in 30 days. Plaintiffs did not know that the secondhand machine was received in part payment. Held, that plaintiffs were not estopped to assert the contract for retention of title, as against defendants.—EXCELSIOR IRON WORKS v. LEE, Mich., 82 N. W. Rep. 207.

110. SALES — Pledges—Bona Fide Holders.—Where plaintiffs sold pianos to a dealer without reserving a lien or title to secure the price, and the dealer pledged them for usurious loans, under false representations that they comprised a part of his stock, that they were paid for, and without the pledgee's knowledge that some of the pianos were taken immediately from the station, on their arrival, to warehouses, for the purpose of being pledged, such pledges were, at most, only put on inquiry, which would have shown the dealer's insolvency, and hence were *bona fide* holders, and entitled to maintain their lien on the pianos as against plaintiffs' claim for the unpaid purchase price.—FISCHER v. LEE, Va., 35 S. E. Rep. 441.

111. SALES—Warranty.—Where the buyer of a mare sold with warranty of title notified the seller that the mare was claimed by H, and the seller refused to repay the price, denying that H owned the mare, and on H suing for her recovery the buyer notified the seller of the nature and pendency of the suit, requesting him to defend, which he refused to do, whereupon the buyer employed counsel and defended the suit, in which he was unsuccessful, he was entitled to recover attorney's fees, as part of his damages, in an action for breach of warranty.—BALTE v. BEDEMILLER, Oreg., 60 Pac. Rep. 601.

112. STATUTES—Construction — Punctuation.—Where a statute contained two sentences, the last of which, as punctuated, had no meaning, the court, in construing the statute may, change the punctuation so as to give a meaning to both sentences; the punctuation being no part of the statute.—MANGER v. BOARD OF STATE MEDICAL EXAMINERS, Md., 45 Atl. Rep. 891.

113. STATUTES—Presentation to Governor—Time for Signature.—A bill which has passed both houses of the general assembly, and been signed by the presiding officers thereof, is presented to the governor, within the meaning of the constitution, when the clerk of the house of representatives or secretary of the senate carries the same to the executive office, and offers or tenders it to the governor or his secretary.—STATE v. MICHEL, La., 27 South. Rep. 565.

114. STATUTES — Retroactive Operation—Legislative Intent.—Acts 1899, p. 180, providing that, when no contractor shall be found to take convicts, they shall work out their fines and costs on the public roads, at the rate of 75 cents a day, contains no clearly expressed intention of the legislature to give it a retroactive operation, and has no application to the case of one who was convicted prior to its passage.—STATE v. MCNALLY, Ark., 55 S. W. Rep. 1104.

115. TAXATION — National Bank Shares—Discrimination.—The term "moneyed capital" is used in a restricted sense in Rev. St. § 5219, providing that the taxation of the shares of national banks shall not be at a greater rate than is assessed upon other moneyed capital in the hands of individuals; and what constitutes moneyed capital, within the meaning of that section, is to be determined by the nature of the business in which it is employed, the purpose of the statute being to prevent discrimination against national banks as such. Where capital is not so employed as to come into competition with the business of national banks, although in a general sense it is moneyed capital, it is within the discretion of the State to tax it at a different rate from banking capital.—NATIONAL BANK OF BALTIMORE v. MAYOR, ETC. OF BALTIMORE, U. S. C. C. of App., Fourth Circuit, 100 Fed. Rep. 24.

116. TELEGRAPHS — Damages—Mental Anguish.—By reason of defendant's neglect to deliver the message, "Meet me to-morrow, twelve o'clock," plaintiff was prevented from seeing her aunt until a few minutes before she died, and not until after she had become unconscious. There was no evidence that plaintiff gave defendant any information, upon the delivery of the telegram, that her aunt was sick, or of the purpose of the message, or made any statement whatsoever. Held, that plaintiff could not recover damages for mental anguish.—KENNON v. WESTERN UNION TEL. CO., N. Car., 35 S. E. Rep. 468.

117. TRUSTS—Construction — Discharge.—Where the testator placed his property in trust for the equal use of his three daughters during their lives, and provided that, if any one of them should die without children of her body "then to the surviving child or children," the death of one of the daughters without issue discharged her share from the trust, and a decree ordering the trustee to pay one-half of such share to each of the surviving daughters was proper.—PRESTON v. CLABAUGH, Md., 45 Atl. Rep. 887.

118. TRUSTS—Construction—Vested Interests.—Where the grantor gave the legal estate in his property to trustees, and created for himself an equitable life estate, with a contingent remainder in fee to his right heirs after the termination of an equitable life estate in his widow, the limitation over to the heirs was not within the rule in Shelley's Case, since the preceding life estate in the grantor was an equitable estate, and the remainder to the heirs was a legal estate,—MERCER v. SAFE DEPOSIT & TRUST CO., Md., 45 Atl. Rep. 865.

119. TRUST — Corporations—Assignment of Stock.—Where a deed of trust assigned stock standing on the corporation books in the grantor's name, and authorized the trustee to transfer it to himself or others, and the grantor delivered the certificates, the fact that they were not signed did not affect the operation of the deed, though the grantor purposely omitted to sign them, with the secret intention of retaining control of the stock.—CURTIS v. CROSSLEY, N. J., 45 Atl. Rep. 905.

120. TRUSTS—Title of Trustee—Injunction.—A bill to restrain the erection of a building on certain land, alleging ownership in complainant in fee, does not debar complainant from the relief sought, if he in fact, holds title as trustee, since Comp. Laws, 1897, § 8844, provides that every express trust shall vest the full estate in the trustees in law and equity, subject only to the execution of the trust.—FOLEY v. KLEIBUSH, Mich., 82 N. W. Rep. 228.

121. VENDOR AND PURCHASER — Contract — Adverse Title.—Where defendant, in possession of land under a contract of purchase made in 1895, purchased a tax title to the land based on taxes of 1893, such title inured to the benefit of the grantor, since the doctrine that a tenant cannot dispute his landlord's title extends to one in possession under a contract of purchase.—CURRAN v. BANKS, Mich., 82 N. W. Rep. 247.

122. VENDOR AND PURCHASER — Parol Exchange of Lands.—To establish a parol exchange of lands, it is necessary only that the terms of the agreement be shown with precision, and that the evidence to support it carry conviction, to a moral certainty, of its truth. Absolute certainty is not required, and a mere conflict in the testimony will not condemn it, provided that out of all of it the facts relied on emerge with reasonable distinctness and certainty.—JERMYN v. ELLIOTT, Penn., 45 Atl. Rep. 938.

123. WATER AND WATER COURSES—Diversion—Laches.—The fact that plaintiff knew for several years that his shortage in water supply was caused by diversion of the water of a stream by defendant's ditch, and made no protest, does not show any laches or acquiescence on his part amounting to an abandonment of his decreed priority.—LOWER LATHAM DITCH CO. v. LOUDEN IRRIGATING CANAL CO., Colo., 60 Pac. Rep. 629.

124. WILLS—Charities—Trusts.—A charitable corporation was named as devisee and legatee in a will, providing that it admit one aged man or woman each year for each $400 of income derived from the property bequeathed, and that the person shall be admitted without cost, and shall through life have maintained a good character, and shall not have been reduced to penury through immoral conduct. Held, that the will did not create a trust in favor of indefinite beneficiaries, but the whole beneficial interest in the property vested in the corporation, for corporate purposes, on a condition subsequent, which did not prevent the vesting of the estate.—BENNETT v. BALTIMORE HUMANE IMPARTIAL SOC. AND AGED WOMEN'S AND AGED MEN'S HOMES, Md., 45 Atl. Rep. 888.

125. WILLS—Conditional Legacy.—The condition that a legacy shall be paid to the legatee two years from date of testator's death, provided that the legatee shall be deemed a reformed man, in the judgment of the executors, is not void for uncertainty, and constitutes a valid condition precedent.—MARKHAM v. HUFFORD, Mich., 82 N. W. Rep. 222.

126. WILLS — Validity — Undue Influence.—That testator, a man 75 years old, and of sound and disposing mind, consulted only with his wife—who was then ill, and died three days thereafter—when making his will, which devised his entire estate to his children in unequal shares, and may have been influenced by his wife in favoring certain children, is insufficient to furnish substantial reason for setting the will aside, where the testator lived three and a half years after his wife's death, and made no change in the will.—DECK v. DECK, Wis., 82 N. W. Rep. 293.

127. WITNESS — Cross Examination of Defendant.—Under Pen. Code, par. 2040, providing that a defendant in a criminal case cannot be compelled to be a witness against himself, but may be cross examined as to all matters about which he was examined in chief, a defendant who testifies in his own behalf as to the circumstances of a homicide, and his whereabouts just before and after the killing, cannot, for purposes of impeachment, be compelled to testify as to whether or not he had been previously convicted of other felonies.—LEWIS v. TERRITORY, Ariz., 60 Pac. Rep. 694.

128. WITNESS—Transaction with Decedent.—Under Rev. St., par. 1865, providing that in suits against administrators neither party shall testify to transactions with the administrator's decedent, unless called for that purpose by the opposite purpose, or required to so testify by the court, the competency of either party's testimony to such transactions is discretionary with the court, and the discretion was not abused by allowing plaintiff to testify to an oral contract with defendant's decedent, when two other parties had testified to the same transaction.—GOLDMAN v. SOTELO, Ariz., 60 Pac. Rep. 696.